



Flash Reports on Labour Law April 2020

Summary and country reports

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Executive Summary

National level developments

In April 2020, **extraordinary measures triggered by the COVID-19 crisis** still dominated the development of labour law in all Member States and European Economic Area (EEA) countries (see Table 1). This included, notably, the following measures:

Measures to diminish the risk of infection in the workplace

All countries still have comprehensive measures in place to prevent the spread of the virus in workplaces. Most frequently, mandatory restrictions of business activity are combined with calls to use options such as work from home to the extent possible. Lockdown measures have been extended in countries such as **Cyprus, France, Greece, Italy, and Romania**, whereas a relaxation of previous measures in certain countries is reported, including **Austria, Croatia, the Czech Republic, Denmark, Luxembourg, the Netherlands, Portugal, and Spain**.

In the **UK**, an exit strategy for future easing of measures has been put in place.

Measures to facilitate work from home (partly including mandatory imposition by the employer) were introduced or expanded in **Cyprus, Luxembourg, Portugal, Slovakia, and Spain**. New health and safety standards for workplaces (concerning, e.g. social distancing, the use of masks, hand sanitiser, regular cleaning, etc.) were enacted in **Austria, Croatia, Cyprus, the Czech Republic, Denmark, Germany, Italy, Latvia, Liechtenstein, Luxembourg and Spain**; in **Ireland**, a draft for such a regulation has been introduced. In some countries, special schemes allow employers to maintain their operations with part of their workforce (e.g. 'partial activity' in **France** or the 'idle time scheme' in **Lithuania**), or to adjust working time to achieve the necessary reduction of activity (as in **Greece**). Countries such as **Austria, France and Liechtenstein** have passed legislation to

prevent vulnerable employees from exposure at the workplace, and in **Poland**, medical workers (who have a high risk of infection in that capacity) have been banned from carrying out additional activities in another workplace.

Measures to alleviate the financial consequences for businesses and workers

State-supported schemes to keep workers employed (short-time work, partial/technical unemployment, etc.) remain in place in many countries. In April, such schemes were initiated or extended in scope in **Germany, Hungary, Iceland, Liechtenstein, Luxembourg, Romania, Spain and Sweden**. Programmes providing financial benefits for workers and/or self-employed persons (incl. tax exemptions/reductions) were initiated or enhanced in **Croatia, Estonia, Greece, Ireland, Italy, Latvia, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain** and the **UK**. Subsidies to employers (incl. tax exemptions/reductions) were introduced or enhanced in **Bulgaria, Denmark, Estonia, France, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Slovakia and Slovenia**.

A deferral of tax and/or social security contribution payments has been granted in the **Czech Republic** and **France**; in **France**, the payment of bonuses to employees has been deferred until the end of the year. Enforcement and insolvency procedures have been suspended in **Belgium, Croatia and Norway**.

In **Luxembourg**, employers are prevented from proceeding with collective dismissals based on a suspension of the necessary proceedings, and probation periods have been extended until the end of the state of emergency. **Latvia** aims to tackle unemployment, i.a., by facilitating the posting of workers abroad.

Leave entitlements and social security

Special rules on entitlements to family- and care-related leave and sick leave continue to apply in a majority of countries. In April, care-related leave rights were introduced or extended in **Cyprus**, the **Czech Republic**, **Germany**, **Luxembourg**, **Portugal**, **Romania** and **Slovakia**. Rules on sick leave for persons in quarantine were enacted in **Luxembourg**, **Slovakia** and the **UK**, and leave entitlements and benefits for vulnerable persons introduced in **Austria** and **Cyprus**. Other amendments improving sickness benefit entitlements have been passed in **Estonia** and **France**, and a draft law in **Germany** aims to ease rules on sickness notification. **Luxembourg** has extended the period of dismissal protection for employees on sick leave, and in turn, shifted the financial burden of the provision of benefits to the state.

Austria has enacted rules for accidents at home to be covered by industrial accident insurance, and recognition of a COVID-19 infection as an industrial injury has been confirmed in **Denmark** and **Luxembourg**. **Norway** has taken measures to ensure coverage by pension insurance during furlough.

Unemployment benefit schemes have been expanded in **Belgium**, **Finland**, **Germany**, **Liechtenstein**, **Slovakia**, **Slovenia**, **Spain** and **Sweden**.

Measures to ensure the performance of essential work

Previously enacted rules to ensure that essential tasks in areas such as health care, public administration and services can be performed continuously have remained in place, and have been supplemented in April in the following areas:

Italy, **Spain** and the **UK** have eased requirements to enter the medical profession, and special leave for volunteers to provide essential tasks was introduced in the **UK**. Essential workers have been made subject to a public duty to work in **Portugal** and **Slovakia**, and in **Portugal**, this includes a restriction of the

right to strike. **Luxembourg** has facilitated re-entry into the workforce for (early) retirees.

Working time restrictions for various groups of essential workers have been relaxed in **Belgium**, **Denmark**, **Hungary**, **Norway**, **Poland**, **Portugal**, **Slovenia** and **Spain**, and a draft for such measures has been presented in **Germany**. **Belgium** has eased various other restrictions to facilitate employment – through the hiring of foreign nationals, hiring under temporary contracts including successive fixed-term contracts, posting from abroad, and the employment of students. **Spain** has also decreased restrictions for fixed-term employment. Rules to enable the assignment of healthcare workers among employers have been enacted in **Romania**, and similarly for public workers in **Spain**. More generally, **Luxembourg** has introduced a ‘job switch platform’ for employers to temporarily make their employees available to other users.

Portugal has introduced a prohibition to dismiss medical workers, and notice periods for these workers have been suspended in **Romania**.

Suspension of and derogations from procedural requirements

Various measures continue to be taken with regard to the interruption or limitation of court services. **Austria** has introduced a moratorium on legal time limits, and the use of video technology in courts has been permitted in the **UK**. In **Luxembourg**, steps are being taken to progressively reimplement regular court service.

A number of measures concern procedures of employee consultation and social dialogue. In **France** and **Germany**, elections for employee representative bodies have been deferred and the mandate of incumbent representatives extended. **France** has shortened various periods in relation to the consultation of employee representative bodies to speed up the process of taking measures (concerning both the Social and Economic

Council at national level and the negotiation and effect of company agreements). In **Portugal**, the right of social partners to participate in the drafting of labour law has been suspended. By contrast, a draft law in **Poland** would again change the recently introduced amendments on the composition of the Social Dialogue Council.

Certain procedures connected to health and safety (examinations, inspections, etc.) have been suspended in the **Netherlands** and **Slovakia**.

Reduction of employee protection

Hungary continues to stand out for introducing the most far-reaching derogations from labour law, many of which are applicable to all workers for the duration of the state of emergency. Apart from the measures reported in March, all employers have been entitled to unilaterally order a reference period for working time of up to 24 months. Football clubs can unilaterally cut their players' pay by up to 70 per cent.

In other countries, measures that reduce employee protection to help employers deal with the crisis are more limited, entailing e.g. a possibility to order employees to use up their annual leave entitlements, as has been introduced in **Slovakia** in April. In **Poland**, employers in the public sector now have extended possibilities to terminate employment relationships or reduce remuneration.

Court decisions on COVID-19-related infringements

In **Cyprus**, the Supreme Court delivered a controversial ruling confirming the constitutionality of a law that cut wages of public sector employees retroactively as an emergency measure.

In **France**, the Versailles Court of Appeal upheld a judgment stating that Amazon had failed to fulfil its health and safety obligations towards workers. It ordered the company to assess the occupational

risks with staff representatives and partly put its operations on hold in the meantime, failure of which will trigger a penalty of EUR 100 000 per infringement.

In **Germany**, the Labour Court Wesel found that one company's use of camera recordings for distance monitoring infringed the works council's co-determination rights. The Administrative Court of Berlin ruled that there was no justification for setting aside the prohibition of parcel delivery work on Sundays and public holidays due to increased demand.

It should be emphasised that national law continues to be subject to repeated change in most countries. The rules described above relate to the law in force on 4 May.

Main developments related to measures to address the COVID-19 crisis

Topic	Countries
Restriction of business activity by lockdown measures	AT CY CZ DK EL ES FR HR IT LU NL PT RO UK
Health and safety measures	AT CY CZ DE DK ES FR IE IT LI LT LU LV PL
Benefits for workers / self-employed prevented from working	EE EL ES HR IE IT LV NL NO PL PT RO SI UK
Employer subsidies	BG DK EE FR IT LT LV MT NL NO PL SI SK
Working time (essential workers)	BE DE DK ES HU NO PL PT SI
Short-time work / technical employment	DE ES HU IS LI LU RO SE
Unemployment benefits	BE DE ES FI LI SE SI SK
Family / parental leave	CY CZ DE LU PT RO SK
Deferral of tax / contributions payment or enforcement procedures	BE CZ FR HR NO
Sick leave for quarantine and vulnerable persons	AT CY LU SK UK
Telework / work from home	CY ES LU PT SK
Employee consultation procedures	DE FR PL PT
Enhanced sick leave entitlement	DE EE FR LU
Admission to medical profession	ES IT UK
Assignment of workers among employers	ES LU RO
Court proceedings	AT LU UK
Coverage by industrial injury insurance	AT DK LU
Court decisions on COVID-19-related infringements	CY DE FR
Dismissal of medical workers	PT RO
Eased restrictions for temporary contracts and foreign workers	BE ES
Public duty to work	PT SK
Unilateral changes to working time and wages by employers	HU PL
Suspension of health and safety-related procedures	NL SK
Facilitation of posting abroad	LV
Forced annual leave	SK
Leave for volunteers	UK
Pension insurance	NO
Re-entry of retirees to work	LU
Suspension of dismissals	LU

Austria

Summary

- (I) A new Ordinance eases the restrictions on entering public places, allows the reopening of shops and specifies work safety rules during the current pandemic.
- (II) Parliament has passed—and is amending—legislation to allow a medical definition of members of risk groups who may possibly have the right to be exempt from work while continuing to receive remuneration, for which the employer is then refunded.
- (III) Legal time limits in court have been interrupted and partly suspended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 General information

The Austrian Parliament has continued to be very active in passing legislation on employment law to address the current COVID-19 crisis, and the respective ministries have continued to amend and specify the relevant administrative ordinances. In the past month, the Austrian government has decided to take a step-by-step approach to cautiously return to a more 'normal' life. Restrictions on entering public spaces are slowly being reduced, while the obligation to wear masks (in public transport, shops, official public buildings) has been expanded. Moreover, additional steps have been taken to ensure work safety and to protect members of risk groups from exposure to COVID-19.

On a more general level, legal time limits have either been interrupted or suspended, which is of particular significance in the field of employment law. Despite the success of short-time work (see also March 2020 Flash Report), many employment relationships have been terminated and numerous claims to challenge these terminations in court are expected.

1.1.2 Easing of measures introduced to contain the spread of COVID-19

The [Ordinance of the Federal Minister of Social Affairs, Health, Care and Consumer Protection on Relaxation of Measures Taken to Contain the Spread of COVID-19](#) (COVID-19 Relaxation Ordinance - COVID-19-LV, Federal Law Gazette II No. 197/2020) was issued on 28 April 2020, and entered into force on 01 May 2020. It will cease to be in force on 30 June 2020. The Ordinance aims to loosen the previously very tight restrictions on any form of presence or movement in public spaces. The previous ordinance was rather unclear about legitimate reasons to enter public spaces and the ministers as well as the chancellor conceded at the end of April 2020 that in fact no reason was ever needed to enter a public space if a distance of one meter was kept between persons not living in the same household. It was furthermore conceded that such restrictions did not apply to private premises. The government did, however, emphasise that so-called 'corona parties', i.e. gatherings of several persons in a house or apartment were illegal, which they, however, never were. The COVID-19 Relaxation Ordinance is at least clearer and more explicit. As a general rule, a distance of one metre must be kept between persons except to those who live in the same household, and in closed public spaces such as shops, a facial mask described as "mechanical protective devices covering the mouth and nose area" must be worn. These do not have to be surgical masks and do not require any certification, but can be homemade – even a wrapped around shawl will suffice.

The most important parts of the Ordinance read as follows (unofficial translation by the authors):

“§ 1 - Public spaces

(1) When entering outdoor public spaces, a distance of at least one metre must be maintained from persons not living in the same household.

(2) When entering indoor public places, a distance of at least one metre shall be maintained from persons not living in the same household and a mechanical protective device covering the mouth and nose area shall be worn.

(3) In mass transport, a distance of at least one metre shall be maintained from persons not living in the same household and a mechanical protective device covering the mouth and nose area shall be worn. If, due to the number of passengers and when boarding and disembarking, it is not possible to maintain the distance of at least one metre, divergence from this requirement by way of exception is possible.

§ 2 – Business customer areas

§ Entering the business customer area of business premises is permitted under the following conditions:

1. A distance of at least one metre must be maintained from persons not living in the same household.

2. Customers must wear a mechanical protective device covering the mouth and nose area.

3. The operator must ensure that he and his employees are wearing a mechanical protective device covering the mouth and nose area when in contact with customers, unless there is no other suitable protective device for spatial separation between the individuals guaranteeing the same level of protection.

4. The operator must take suitable measures to ensure that only a maximum number of customers are present in the business customer area at the same time, so that 10 m² are available per customer; if the business customer area is smaller than 10 m², only one customer may enter the premise at a time. In the case of business premises without staff, this requirement must be pointed out in an appropriate manner.”

This ordinance also contains specific rules on the workplace: employers must ensure that there is a distance of at least one metre between the employees when at their place of work, unless other protective measures are in place to minimise the risk of infections (such as plexiglass shields, etc.). The same (other suitable protective measures) is required in case the nature of the professional activity does not allow keeping a distance of one metre. However, the employer may not impose a duty to wear masks in the regular working environment, any obligation to wear a mask is subject to an agreement between the employer and employee. The recommendation to work from home that had been included in the previous ordinance has been omitted. For high-risk groups, special precautions must be taken (see subitem 1.2).

The relevant section reads as follows:

“Places of professional activity

§ (1) A distance of at least one metre must be maintained between persons at the place of work, unless the risk of infection can be minimised by suitable protective measures.

(2) The obligation to wear a mechanical protective device covering the mouth and nose area in areas where this is not already mandatory under other legal provisions is only permissible if agreed between the employer and employee.

(3) If, due to the nature of the occupational activity, a distance of at least one metre between persons cannot be maintained, the risk of infection shall be minimised by other suitable protective measures.

(4) Paragraphs 1 to 3 shall apply analogously to the employer's vehicles if they are used for occupational purposes during working hours.”

Other provisions deal with the joint use of vehicles as well as with assemblies and events:

“§ 4 - Car pools

(1) The joint use of motor vehicles by persons who do not live in the same household is only permitted if a mechanical protective device covering the mouth and nose area is worn and only two persons sit in each row of seats, including the driver.

(2) The same shall apply to taxis and taxi-like establishments.

§ 10 - Events

§ (1) Events with more than 10 persons are prohibited.

(2) Events are deemed, in particular, to be planned meetings and undertakings for entertainment, amusement, physical and mental training and edification. These include cultural events, sporting events, weddings, film screenings, exhibitions, congresses.

(3) For funerals, the maximum number of participants is 30.

(4) When entering venues pursuant to subsection 1, a distance of at least one metre shall be maintained from persons not living in the same household. Furthermore, a mechanical protection device covering the mouth and nose area must be worn in closed rooms. For events in closed rooms, an area of 10 m² per person must also be available.

(5) Paragraph 1 does not apply to

1. Events in private living spaces,

2. Meetings in accordance with the Assembly Act 1953, BGBl. No 98/1953, which are permissible under the conditions of the aforementioned Federal Act.

3. Meetings for professional purposes, if these are absolutely necessary for the maintenance of the professional activity,

....”

Sources:

A press article of Der Standard from 01 May on this issue is available [here](#).

Another press article of Der Standard from 01 May relating to the Ordinance is available [here](#).

1.1.3 COVID-19 Risk Certificate for Employees

The General Social Security Act (*Allgemeines Sozialversicherungsgesetz* – hereinafter: ASVG) has been amended by insertion of [§ 735 ASVG](#) (3. COVID-19 Act, Federal Law Gazette I No. 23/2020) to allow for the definition of risk groups, e.g. the definition of certain medical conditions that increase the likelihood of developing a severe case of COVID-19 if infected. Based on this official definition, employees that are known to meet the criteria of the risk group will be officially informed. They—as well as any other employee—may or may not contact their general practitioner (hereinafter: GP). The GP will then, based on the official guidelines, assess the medical situation him-/herself, and,

if the patient meets the criteria, issue a certificate that the respective person falls under the definition of risk group.

If an employee submits such a certificate to his/ her employer, s/he is entitled to be exempt from work while receiving full remuneration, unless the work can be performed from home (home office) or if the employer manages to design the workplace (and the journey to work) in such a way that an infection with the COVID-19 virus can be prevented with the greatest possible certainty. If the respective employee is exempt from work, because neither home office nor a safe working environment is possible, the employer is entitled to compensation for that employee's remuneration from the state. S/he must claim compensation with the social security provider within six weeks after the exemption from the obligation to work has expired. Any termination of the employment relationship due to belonging to a risk group can be challenged in court.

The legislation on employees who are part of a risk group entered into force on 05 April, and an exemption from work was envisaged until at least 30 April. No official definition of the diseases that classify an individual as belonging to a risk group has yet been issued. Hence, due to difficulties in the implementation process, the law has not yet been enforced.

Meanwhile, the legislation has been amended, extending the right to exemption from work until at least 31 May 2020 (with the possibility of an extension until 31 December), including the currently excluded employees who work in critical infrastructure. The amendment passed the second chamber of Parliament on 04 May.

The [amended draft version of § 735 ASVG](#) on the COVID-19 risk certificate reads as follows:

"(3) If a person submits a COVID-19 risk certificate to his employer, he shall be entitled to exemption from work and continued payment of remuneration, except if

- 1. the person concerned can perform his or her work at home (home office) or*
- 2. the conditions for the performance of his or her work at the workplace can be designed in such a way that infection with COVID-19 can be prevented with the greatest possible certainty; in this context, measures for the journey to work must also be included.*

The exemption shall apply until 31 May 2020. If the COVID-19 crisis continues beyond 31 May 2020, the Federal Minister of Labour, Family and Youth, in agreement with the Federal Minister of Social Affairs, Health, Care and Consumer Protection, shall by ordinance extend the period during which such exemption is possible, but to no later than 31 December 2020. Dismissal for being exempt from work can be challenged in court."

Sources:

A comparison between the current version and the amended draft version of § 735 AVSG is available [here](#).

A FAQ by the Ministry on Social Affairs on COVID-19 risk groups and the risk certificate is available [here](#).

1.1.4 Workplace accidents in home offices

The ASVG has been amended (3. COVID-19 Act, Federal Law Gazette I No. 23/2020) to now include an explicit provision that accidents while working from home are also considered workplace accidents. The relevant provisions in [§ 175](#) that include the legal definition of a workplace accident read as follows:

"(1a) For the duration of measures to prevent the spread of COVID-19 under the COVID-19 Measures Act, Federal Law Gazette I No. 12/2020, accidents at work are also accidents that occur at the insured person's place of residence (home office) in a temporal and causal connection with the employment on which such insurance is based.

(1b) The place of residence of the insured person (home office) shall be deemed to be the place of work within the meaning of Para. 2 Z 1, 2, 5 to 8 and 10 for the scope of application of this Federal Act."

The provision entered into force retroactively on 11 March 2020 and will cease to be in force on 31 December 2020, the latest.

An article by Martin Risak on the amended version of § 175 AVSG is available [here](#).

1.1.5 Moratorium on legal time limits/Act on accompanying measures for COVID-19 in the judiciary

The National and Federal Assembly passed the [Act on accompanying measures for COVID-19 in the judiciary](#) (*Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 in der Justiz, 1. COVID-19-Justiz-Begleitgesetz – 1. COVID-19-JuBG*, BGBl. I Nr. 16/2020, amended by BGBl. I Nr. 24/2020). The Act entered into force on 22 March 2020 and will cease to be in force from 31 December 2020 onwards.

The Act stipulates in § 1 in that all procedural (judicial and statutory) time limits including preclusive deadlines in civil proceedings are interrupted as of 22 March 2020 until 30 April 2020:

§ 1 Interruption of time limits

(1) In court proceedings, all procedural deadlines that fall within the period after the entry into force of this Act and procedural deadlines that have not yet expired by the time this Act enters into force shall be suspended until the end of 30 April 2020. They shall begin to run again thereafter. For the purpose of calculating a time limit under section 125(1) of the Code of Civil Procedure, 1 May 2020 shall be deemed the date on which the point in time or event to which the onset of the time limit relates, falls. For the purpose of calculating a period under section 125(2) of the Code of Civil Procedure, 1 May 2020 shall be deemed the date on which the period began. This shall not apply to proceedings in which the court shall decide on the legality of an upright deprivation of liberty under the Housing Act, Federal Law Gazette No. 155/1990, under the Home Residence Act, Federal Law Gazette I No. 11/2004, under the Tuberculosis Act, Federal Law Gazette No. 127/1968, or under the Epidemic Act 1950, Federal Law Gazette No. 186/1950, or to benefit periods.

(2) The court may, however, pronounce in the respective proceedings that a time limit shall not be interrupted for the duration specified in subsection 1. In this case, it shall at the same time determine a new reasonable time limit. This decision may not be appealed.

(3) Pursuant to para 2, such action shall only be taken if, after careful consideration of all circumstances, continuation of the proceedings is urgently required to avert danger to life and limb, security and freedom or to prevent substantial and irreparable damage to a party to the proceedings, and if the public interest in preventing and fighting the spread of COVID-19 and the protection of the maintenance of orderly court operations do not outweigh the individual interests."

These deadlines will start to run anew on Friday 01 May 2020. Judges may make exceptions to this rule in individual proceedings if the continuation of the proceedings is

urgently required (i) to avert danger to life and limb, security and freedom or (ii) to prevent substantial and irreparable damage to a party to the proceedings (e.g. proceedings on interim measures). The Act does not, however, prohibit parties from submitting writs in ongoing proceedings or from lodging new claims.

Time limits for bringing proceedings before the courts of first instance are not interrupted, only suspended, meaning that the period from 22 March until 30 April 2020 is not included in the period in which an action is to be brought before the court. Hence, the time limits to challenge a dismissal in court, which is generally two weeks, have been suspended. See for this instance § 2:

"§ 2 Suspension of time limits for bringing proceedings before the Court of First Instance

The period from the entry into force of this Act until the end of 30 April 2020 shall not be included in the period in which an action or application is to be brought before a court or a declaration is to be made."

The Labour Constitution Act (*Arbeitsverfassungsgesetz* - hereinafter: ArbVG) was amended (2. COVID-19 Act, BGBl. Nr. 1, 16/2020) in a similar fashion to ensure the suspension of time limits for challenging a termination in establishments that have a works council, or are legally required to have one:

"§ 170 ArbVG Provisions related to COVID-19

(2) The continuation of a period under sections 105 (4) or 107 running on 16 March 2020 or beginning after that date shall be suspended until 30 April 2020."

As for hearings, the Federal Ministry of Justice has issued a decree instructing all courts to reduce their office hours as far as possible and to only hold hearings if absolutely necessary for the maintenance of orderly administration of justice. Most civil court hearings have been postponed.

Sources:

An official overview of the legislative measures to respond to the COVID-19 crisis of the Ministry of Justice is available [here](#).

An overview of the second COVID-19 Act of the Austrian bar is available [here](#).

1.2 Other legislative developments

The amendments described in the March 2019 Flash Report passed the Federal Assembly on 14 March and have now entered into force.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Belgium

Summary

(I) A Royal Decree protects companies against certain actions by their creditors.

(II) Temporary legislation to contain the coronavirus crisis includes an increase in the number of voluntary overtime hours in critical sectors, the employment of foreign nationals with special residence conditions, the conclusion of successive fixed-term employment contracts in critical sectors, the posting of workers to employers in critical sectors, student work during the second quarter of 2020 in all sectors and temporary employment in critical sectors.

(III) "Degressive" unemployment benefits have been temporarily suspended.

(IV) In the case of a 'no deal Brexit' at the end of the transitional period, a law introduces three temporary crisis measures in favour of employers and their employees who are facing economic difficulties.

(V) The government has submitted a draft law transposing Directive 2018/957.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Economic measures

Contrary to usual practice, this Flash Report also mentions a few important COVID-19 measures related to the economy because the rescue of companies is essential for the retention of employment. The March Flash Report already mentioned that Parliament transferred legislative powers based on the Law of 27 March 2020 'COVID II', authorising the King and the federal government to introduce socio-economic measures to fight the spread of COVID-19. The federal government has issued several decrees based on that legislative power.

[Royal Decree No. 15 of 24 April 2020](#) (*Moniteur belge*, 24 April 2020) provides for the temporary suspension of measures and legal acts against all undertakings whose survival was threatened by the spread of the COVID-19 epidemic and which were not in a 'state of cessation of payments' on 18 March 2020. The Royal Decree provides for a temporary suspension from 24 April 2020 until and including 17 May 2020, but the King may extend that deadline.

The following is a brief summary of the relevant suspension measures:

- With the exception of immovable property, the creditor may not seize the company's assets as security for any of the company's debts. Seagoing and inland waterway vessels may, however, be subject to a conservatory attachment;
- A company cannot be declared bankrupt or be dissolved by the court on the basis of a writ of summons, unless it is based on the initiative of the public prosecutor or the provisional administrator appointed in accordance with the Economic Law Code, or with the consent of the debtor. Nor can a transfer of business activities be ordered under judicial authority;
- Payment periods granted to companies and included in a restructuring plan approved by the court are extended for a period equal to that of the suspension referred to in Royal Decree No. 15, and where appropriate, with an extension of the maximum period of five years for the implementation of the plan;

- Agreements concluded before 24 April 2020 cannot be unilaterally or judicially dissolved due to non-payment of a monetary debt that is due and payable under the agreement. This provision does not apply to employment contracts.

1.1.2 Labour law measures

The Law of 27 March 2020 'COVID II' authorises the King to make adjustments to labour law with a view to the proper organisation of businesses and the continuity of essential services.

To implement the legislation, Royal Decree No. 14 of 27 April 2020 (*Moniteur belge*, 28 April 2020) on special powers contains several support measures aimed at ensuring smooth organisation of work in critical sectors. Critical sectors refers to businesses and institutions that provide essential services, as listed in the Annex to the Ministerial Decree of 23 March 2020 containing urgent measures to limit the spread of COVID-19 (see March 2020 Flash Report).

The measures provided for in this decree are as follows:

(i) Increase in the number of voluntary overtime hours in critical sectors

The number of voluntary overtime hours an employee may work according to Article 25a of the Labour Code of 16 March 1971, shall be increased to 220 hours in the second quarter of 2020 (April-May-June) in critical sectors. As a reminder, the number voluntary of overtime hours in the private sector is 120 hours pursuant to Collective Bargaining Agreement No. 29 of 23 April 2019, while in the public sector covered by the Labour Code, the permissible amount is 100 hours.

The additional number of voluntary overtime hours worked during the second quarter of 2020 does not have to be compensated by overtime rest and does not count towards the application of the internal overtime limit (i.e. the maximum number of overtime hours a worker may work at any given time). Voluntary overtime under the additional number of hours does not entitle the employee to overtime pay, either.

There is, however, a ceiling on overtime work: specifically, the European maximum working time (48 hours per week on average, calculated over a period of 4 months) may not be exceeded. Moreover, working hours may not exceed 11 hours a day and 50 hours a week.

(ii) Employment of foreign nationals with special residence conditions

According to the standard rules, asylum seekers who apply for international protection are only allowed to work in Belgium after residing there for four months.

In view of the lack of workers in some sectors due to the closing of borders, this regulation can be derogated from until 30 June 2020. The condition, however, is that the application for international protection must have been submitted by 18 March 2020 at the latest. Moreover, this derogation can only be used if the employer assumes responsibility for the asylum seeker.

(iii) Conclusion of successive fixed-term employment contracts in critical sectors

During the second quarter of 2020 (April-May-June), successive fixed-term contracts can be concluded in critical sectors without giving rise to the entitlement to an employment contract of indefinite duration. However, fixed-term contracts must be concluded for a period of at least 7 consecutive days. Employees who are currently unemployed can thus find temporary employment in a flexible manner with an employer operating in critical sectors.

After 30 June 2020, the standard rules for concluding successive fixed-term employment contracts will apply again. If a contract expires on 30 June 2020 and the employer

wishes to conclude a new fixed-term contract with the same employee, the employer will have to prove that the conclusion of this new fixed-term contract (instead of an open-ended employment contract) is justified by the nature of the work or other legitimate reasons.

(iv) Posting of workers to employers in critical sectors

During the second quarter of 2020 (April-May-June), employers from any sector can, in a flexible manner, post their permanent employees to employers in critical sectors. The condition, however, is that the employee was already permanently employed by the given employer before 10 April 2020.

The conditions and duration of the posting must be specified in advance in writing and signed by the employer, the user undertaking and the employee. The employee's written consent is not required if tacit consent is customary in the respective industry the employee is employed in.

There is no obligation to obtain prior consent from the trade union delegation at the user undertaking. Nor does the labour inspectorate have to issue its consent to such a posting.

The employment contract that binds the employee to his/her employer shall continue to apply during the period of posting. However, the user becomes jointly and severally liable for the payment of the employee's social security contributions, wages, allowances and benefits that follow from such posting. Under no circumstances may these wages, allowances and benefits be lower than those earned by employees who perform the same functions in the user undertaking (principle of equal pay for equal work applies).

(v) Student work during the second quarter of 2020 in all sectors

The working hours performed by students during the second quarter of 2020 will not be charged the standard quota of 475 hours that students may work annually, at a favourable social security rate. This neutralisation during the second quarter applies to work performed in all sectors.

(vi) Temporary employment in essential sectors

Articles 7-10 of Royal Decree No. 14 of 27 April 2020 on employment in essential sectors must be read in conjunction with the provisions of the Royal Decree of 23 April 2020 (*Moniteur belge*, 30 April 2020), which temporarily eases the conditions under which unemployed persons may be employed in essential sectors and temporarily suspends degressive full unemployment benefits.

The following are considered essential sectors: undertakings under the Joint Committee for Agriculture (PC 144), undertakings under the Joint Committee on Horticulture (PC 145) with the exception of the sector of planting and maintenance of parks and gardens, undertakings under the Joint Forestry Committee (PC 146), and the agencies under the Joint Committee on Temporary Agency Work and recognised companies providing community work or services (PC 322), insofar as the temporary agency worker is employed by a user in one of the sectors mentioned above.

Temporary unemployed persons, unemployed persons who receive a company allowance and employees on time credit, those on a career break or who have taken thematic leave can temporarily work for another employer operating in an essential sector. In that case, they retain 75 per cent of their social security unemployment benefits. The temporary employment may be carried out in the period 01 April 2020 to 31 May 2020.

Unemployed persons who receive a company allowance can also temporarily return to their former employer operating in an essential sector, while retaining 75 per cent of their unemployment benefits. The supplementary allowance will be paid at 100 per cent and is exempt from social security contributions.

Employees on time credit, those who have taken a career break or thematic leave can temporarily work for a company operating in an essential sector from 01 April 2020 until 31 May 2020. In that case, they will retain 75 per cent of their unemployment benefits.

Employees on time credit, those who have taken a career break or thematic leave and who are already employed by an employer operating in an essential sector can start working for their employer full time again during that same period, i.e. from 01 April 2020 until 31 May 2020. During that period, the employee will not receive career break benefits, but at the end of the period, the time credit, career break or thematic leave will automatically continue for the remaining period.

1.1.3 Social security and unemployment benefits

(i) Benefit conditions

The Royal Decree of 23 April 2020 (*Moniteur belge*, 30 April 2020), which temporarily eases the conditions under which unemployed persons may be employed in essential sectors and temporarily suspends the degressive full unemployment benefits, is important in a general sense for determining the amount of unemployment benefits, which in Belgium are not limited in time but are degressive.

Degressive unemployment benefits means that the amount of unemployment benefits gradually decreases in proportion to the duration of unemployment and the employee's salary. In principle, unemployment benefits decrease with each transition to the subsequent phase, either because the wage ceiling based on which the benefit is calculated decreases or because the percentage of the benefit decreases. Reintegration into the labour market will be much more difficult due to the COVID-19 crisis. That is why the degression of unemployment benefits has been suspended.

In concrete terms, the phase or sub-phase of the compensation period the individual has reached on 01 April 2020 will be extended by three months.

(ii) Procedures

The COVID-19 measures have led to an influx of applications for temporary unemployment benefits.

To be able to adequately respond to this influx of applications, the federal government decided on 20 March 2020 to temporarily relax the rules on temporary unemployment for all cases of temporary unemployment related to the coronavirus (see March 2020 Flash Report, point 1.1.3). The Royal Decree of 30 March 2020 (*Moniteur belge*, 02 April 2020), adapting the procedures in the context of temporary unemployment due to COVID-19 has retroactively created the legal foundation for the easing of these rules.

1.2 Other legislative developments

1.2.1 Brexit

By the Law of 06 March 2020 (*Moniteur belge*, 25 March 2020) on the safeguarding of employment following the United Kingdom's withdrawal from the European Union, the Belgian federal legislator introduced three temporary crisis measures in favour of employees and their employers facing economic difficulties caused by Brexit. An important clarification of these measures is that they have not yet entered into force and can only be applied in case of a 'no deal Brexit' at the end of the transition period provided for in the 'withdrawal agreement'.

The circumstances of economic difficulties must be recognised by the Minister of Labour, and the company must, in particular, demonstrate that the turnover, production or

orders have fallen by at least 5 per cent as a result of the United Kingdom's withdrawal from the European Union.

To qualify for the beneficiary measures, the employer must be bound by a sectoral collective bargaining agreement or, in the absence thereof, by a collective bargaining agreement at company level.

An employer who fulfils all of these conditions can benefit from three temporary crisis measures:

- A special scheme for temporary unemployment, whereby the performance of employment contracts is suspended altogether or working time is reduced. However, the employer must pay a supplement to the unemployment benefits of at least EUR 5.63 per day not worked;
- A temporary reduction in individual working time by 1/5th or up to half-time employment for a period not less than one month and not exceeding six months. This agreement between the parties must be formalised in an agreement between the employer and the employee;
- A temporary adjustment of working time in the company, in particular a reduction of one quarter or one-fifth of the working time. This adaptation must be based on a company collective bargaining agreement or, if there is no trade union delegation, via an amendment to the work rules at company level.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Transfer of undertaking

CJEU case C-344/18, 26 March 2020, ISS Facility Services

The CJEU recently issued a decision on a complicated transfer of undertakings case. Mrs Govaerts had been employed by the cleaning company ISS, which was responsible for cleaning and the maintenance of various buildings in the City of Ghent, divided into three lots. Mrs Govaerts was the project manager of the three areas of work for those lots. When the contract between ISS and the City of Ghent ended, a tender for the cleaning and maintenance was issued for those three lots. Although ISS participated, its tender was unsuccessful. Lots 1 and 3 were awarded to its competitor Atalian, while Lot 2 was awarded to another competitor, Cleaning Masters.

When ISS stopped rendering services to the City of Ghent, the question arose what would happen with Mrs Govaerts' employment contract. ISS claimed that her employment relationship was to be transferred to Atalian, in application of Belgian Collective Bargaining Agreement No. 32bis concluded in the National Labour Council on 07 June 1985, transposing the Transfer of Undertakings Directive 2001/23/EC in Belgium. Atalian objected to ISS's claim. As none of the companies continued to employ Mrs Govaerts, she initiated legal proceedings to claim payment of an indemnity in lieu of notice from both ISS and Atalian.

On 25 May 2018, the Belgian Appeal Labour Court of Ghent requested a preliminary ruling. The referring court, in essence, sought to ascertain whether, when a transfer of undertaking takes place involving a number of transferees, Directive 2001/23/EC must be interpreted as meaning that the rights and obligations arising from a contract of

employment that existed at the time of transfer, are transferred to each transferee, in proportion to the tasks performed by that worker, or whether they are only transferred to the transferee for whom the worker will continue performing his/her principal tasks. In the alternative, the referring court asked whether that provision must be interpreted as meaning that the rights and obligations arising from the contract of employment cannot be asserted against either of the transferees.

The ruling of the CJEU is as follows.

Although Directive 2001/23/EC intends to safeguard the rights of the employee in the event of a change of employer, the interests of the transferee, who must be in a position to make the adjustments and changes necessary to carry on his/her business, cannot be disregarded. A fair balance should thus be found between the interests of the employees, on the one hand, and those of the transferee, on the other.

Where there is a transfer of undertaking involving a number of transferees, Article 3(1) of Directive 2001/23/EC must be interpreted as meaning that the rights and obligations arising from a contract of employment are transferred to each of the transferees in proportion to the tasks performed by the worker concerned, provided that the division of the contract of employment as a result of the transfer is possible, and neither causes a deterioration of working conditions nor adversely affects the safeguarding of the rights of workers guaranteed by that Directive, which it is for the referring court to determine. If such a division were to be impossible or would adversely affect the rights of that worker, the transferee(s) would be regarded as being responsible for any consequent termination of the employment relationship under Article 4 of that Directive, even if that termination were to be initiated by the employee.

his CJEU ruling provides, for the first time, for a part-time transfer of employment contracts to different employers, unless this is impossible or affects the rights of the persons concerned.

3.2 Posting of workers

CJEU joined cases C-370/17 and C-37/18, 02 April 2020, CRPNPAC

The CJEU delivered a judgment in the joined cases *Vueling Airlines* concerning the binding effect of the A1 social security certificates. The case law of the *Altun* judgment was confirmed by the Court of Justice. At the same time, the Court diverged from the authority of *res judicata* in a criminal judgment.

In 2012, the company Vueling Airlines SA was criminally convicted for having employed flight staff not affiliated with the French social security system at the airport of Paris-Charles-de-Gaulle in Roissy France. That staff was affiliated with the Spanish social security system, though they had been posted to France. Vueling had obtained E101 certificates from the competent Spanish institution but the French judge had not taken them into account. The CJEU judgment follows from the consequences of that conviction. Preliminary rulings were given by the Tribunal de Grande Instance at Bobigny and the French Court of Cassation in each case on the basis of claims for damages for failure of registering the employees with the French social security system.

The CJEU ruled in the joined cases *Vueling Airlines* (C-370/17 and C-37/18) that the judge of the host Member State cannot disregard an E 101 certificate (the predecessor of the current A1 certificate) if he or she deems that such certificate was fraudulently obtained.

A posted worker may, under certain conditions, remain subject to the social security system of the sending state and does not have to be affiliated with the social security system of the host state. The authorities of the sending state may confirm this submission in an official document, i.e. the A1 certificate.

In the past, the CJEU has consistently held that an E101 certificate binds the institutions of the host state (i.e. both the competent social security institutions and the judiciary) as long as it has not been withdrawn or declared invalid.

This binding effect was first curtailed in the *Altun* case (see also February 2018 Flash Report). If the authorities of the receiving state (1) have entered into a dialogue with the authorities of the sending state on the basis of information pointing to fraud (2) through an application for review, and (3) the authorities of the sending state fail to adequately deal with this application within a reasonable period of time, (4) the court of the receiving state, which establishes fraud, may, according to the Court, disregard the E 101 declaration.

In the joined *Vueling* cases, the scope of the 'Altun' doctrine was called into question. In the case of fraud, can the judge of the host state immediately disregard the declaration (i.e. broad scope of Altun) or must he/she first determine whether a dispute procedure has been initiated (i.e. the limited scope of Altun)?

Contrary to Advocate General Saugmandsgaard, the CJEU ruled that in order for the national court of the host state to be able to disregard A1 forms, two cumulative conditions must be fulfilled:

(1) the competent social security institution of the host state has submitted a proper request for reconsideration or withdrawal of the A1 forms to the competent issuing institution of the sending state, having regard to the information available to it which gives rise to a suspicion of fraud, and the issuing institution has failed to take that information into account; and

(2) the information available allows the national court of the host state, with due regard for the rights of the defence, to rule that the A1 forms were obtained fraudulently.

And the authority of the criminal justice decision? It is not considered 'absolute' by the CJEU. The authority of the *res judicata* may not result in a breach of Union law being continued before the civil courts. The civil court may deviate from the criminal court:

"In the light of the foregoing, the answer to the second question (...) is that Article 11(1) of Regulation No. 574/72 and the principle of the primacy of EU law must be interpreted as precluding, in a situation where an employer has, in the host Member State, acquired a criminal conviction based on a definitive finding of fraud made in breach of EU law, a civil court or tribunal of that Member State, bound by the principle of national law that a decision which has the authority of res judicata in criminal proceedings also has that authority in civil proceedings, from holding that employer to be liable, solely by reason of that criminal conviction, to pay damages intended to provide compensation to the workers or a pension fund of that Member State who claim to be affected by that employer's conduct" ..

The CJEU ruling confirms the *Altun* case law, and contains a procedural relativisation of the authority of the *res judicata* of a decision of the criminal court that has become definitive. The Belgian system of the *res judicata* in criminal matters is very similar to that of France.

4 Other Relevant Information

4.1 Posting of workers

In Belgium, the federal government has submitted a draft law transposing Directive 2018/957/EU amending Directive 96/71/EC on the posting of workers to the Chamber of Representatives ([Memory of Understanding](#), *Parl. Documents*, Chamber of Representatives, 2019-2020, No. 55-1173/001). Directive 2018/957/EU must be transposed before 30 July 2020.



The draft law amends the Law of 5 March 2002 on working, pay and employment conditions in the event of the posting of workers in Belgium and compliance with it, taking account of the extension introduced by Directive 2018/957 to the fundamental mandatory provisions on minimum protection of Directive 96/71.

The draft law also regulates the application of the Belgian sectoral provisions providing for allowances or reimbursement of travel, meal and subsistence expenses for workers who are away from home for work.

The draft law also introduces provisions in the Law of 5 March 2002 providing for the application of a more extensive package of Belgian working conditions when the duration of the posting exceeds 12 months.

In addition, the draft law also amends the Law of 24 July 1987 on temporary agency work and the posting of workers to create information obligations under criminal law for users of posted workers who are established in Belgium, in particular information on the working conditions applicable to posted temporary workers and information on the place of posting when the user employs the workers posted to a country other than Belgium.

The draft law also creates a mechanism that reduces the penalties for non-compliance with the applicable Belgian working and employment conditions in the case of posting if the only official website in Belgium does not mention these working and employment conditions.

Bulgaria

Summary

A new decree grants subsidies to employers to retain employment.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 General information

On 13 March 2020, the National Assembly of Bulgaria declared a state of emergency in response to the COVID-19 pandemic. On 23 March, the National Assembly adopted the [Act on Measures and Actions during the State of Emergency](#) Declared by the National Assembly on 13 March 2020 (promulgated, *State Gazette No. 28 of 24 March 2020*).

The [Act on Amendments and Supplements to the Act on Measures and Actions during the State of Emergency](#) Declared by the National Assembly on 13 March 2020 (promulgated, *State Gazette No. 34 of 09 April 2020*) extended the term of the measures until 13 May 2020.

1.1.2 Compensations for employers

On 30 March 2020, the Council of Ministers adopted Decree on Conditions and Procedure for Payment of Compensation to Employers to Retain the Employment of Employees during the State of Emergency declared by the National Assembly with its Decision of 13 March 2020 (promulgated, *State Gazette No. 28 of 01 April 2020*).

1.2 Other Legislative Developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Croatia

Summary

- (I) A number of measures has been adopted to address the challenges caused by the COVID-19 crisis.
- (II) The Minister of Health has issued a new ordinance on the manner of implementation and protection to prevent injuries from sharp objects.
- (III) The Constitutional Court ruled on judicial protection against employers issuing warnings of disciplinary action.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Prohibition of new employment in the public sector

Due to the COVID-19 crisis, the Government of the Republic of Croatia has prohibited new employment in the public sector ([Decision on limiting the use of funds provided for by the State Budget of the Republic of Croatia and the financial plans of extra-budgetary beneficiaries of the State Budget for 2020](#), Official Gazette No. 41/2020). However, this does not apply to the healthcare sector or when a justified reason for new employment exists and with the prior consent of the Minister of Finance.

The government has issued a statement that it will launch negotiations with the social partners on the amount that shall serve as the base amount for the calculation of salaries of civil servants and employees in the state administration and for other public sector employees ([Conclusion of 02 April 2020](#), No. 022-03/20-07/89, 50301-25/14-20-2, Official Gazette No. 41/2020). Apart from this, the government plans to negotiate other financial rights guaranteed to civil and public servants and employees in the public sector based on collective agreements.

1.1.2 Tax relief

The [Amendment to the General Tax Act](#) has been adopted (Official Gazette No. 42/2020).

Tax payments can be fully or partially exempt if, due to the COVID-19 crisis, the employer's activities are prohibited based on a decision of the competent authority, or if his/her work has been suspended or significantly impeded. See also an extract of an [article](#) of the author in the Italian Labour Law e-journal (Vol. 13, No. 1S (2020)):

"Tax relief is available to employers whose income has declined (or is likely to decline in the next three months compared to the same period of last year) by at least 20% due to the COVID-19 crisis (Ordinance on Implementation of General Tax Law, Official Gazette No 35/2020). With the initial measure, the employers affected by the crisis were entitled to an interest-free deferral of taxes due. Two weeks after introducing this measure, the Government decided to introduce additional measures because it faced the reasoned criticism of employers: now they can be exempted from paying tax completely or they can pay the deferred tax in instalments. It is obvious that most employers would not be able to accumulate enough money to pay their taxes immediately after the crisis, as they would be required to in line with the initial measure. According to the Amendment to the Ordinance on the Implementation of the General Tax Act,



if the crisis lasts longer than three months, entrepreneurs can defer paying their taxes by three more months. Entrepreneurs unable to meet their fiscal obligations by that deadline can apply to pay tax in monthly instalments over up to 24 months, interest-free. Employers are exempted from paying social security contributions on subsidized salaries. Those whose business operations have been closed by the decision of the competent authority during the COVID-19 crisis will be exempted from paying tax arrears if their income decreases by at least 50% within the period of three months after the entry into force of this provision relative to the same period in the previous year (Arts 71c – 71m of the [Amendment to the Ordinance on the Implementation of General Tax Act](#), Official Gazette No 43/2020)."

1.1.3 Transfer of funds planned in the State Budget

The Government of the Republic of Croatia has issued the [Decision on the transfer of funds planned in the State Budget of the Republic of Croatia](#) (Official Gazette No. 45/2020). With this decision, the Government of the Republic of Croatia will reallocate funds within the budget headings of the State Budget of the Republic of Croatia for 2020 (Official Gazette No. 117/19) to remedy the consequences of the COVID-19 crisis. Among others, lower amounts are provided for the salaries of employees in public administration.

1.1.4 Job retention measures

Salary supplements are being provided for employees in the sports sector ([Amendment to the Sports Act](#), Official Gazette, No. 47/2020).

1.1.5 Measures to support economic and other activities during the COVID-19 crisis

In view of the restrictions introduced following the outbreak of the COVID-19 epidemic, the Government of the Republic of Croatia has [decided](#) to restart activities in three phases (Official Gazette No. 50/2020). Shopping malls will be progressively reopened, along with the reactivation of the hospitality sector, the full operation of the healthcare sector, reintroduction of domestic air services, etc.

1.1.6 Trade activity/public transport

The Civil Protection Headquarters has issued a [Decision on working hours and means of operation in trade activities for the duration of the COVID-19 pandemic](#), which, among others, provides that all shops are required to comply with the containment measures and employers are required to instruct their employees on general containment measures. Apart from this, it regulates the organisation of working hours, cleaning and disinfection of the premises, of shops, etc. (Official Gazette No. 51/2020). According to the [Decision on the organisation of public transport for the duration of the COVID-19 pandemic](#) (Official Gazette No. 51/2020), trams and other public transport service providers are required to instruct their employees on general containment measures as well.

1.1.7 Act on Intervention Measures in Enforcement and Insolvency Procedures

The [Act on Intervention Measures in Enforcement and Insolvency Procedures for the Duration of Special Circumstances](#) has been adopted (Official Gazette No. 53/2020). This Act prescribes special intervention measures in enforcement and insolvency proceedings for the duration of the special circumstances due to the outbreak of the COVID-19 pandemic. Enforcement proceedings (including enforcement proceedings on salaries) will not be carried out during the special circumstances due to the COVID-19 crisis. However, enforcement proceedings to settle the claim for legal child support will be carried out. Furthermore, insolvency proceedings will not be initiated for insolvency reasons arising from the COVID-19 crisis.

1.2 Other legislative developments

1.2.1 Ordinance on the manner of implementation and protection to prevent injuries from sharp objects

The Minister of Health has issued a new [Ordinance on the manner of implementation and protection to prevent injuries by sharp objects](#) (Official Gazette No. 39/2020) based on the Health Care Act. The previous ordinance on the manner of implementation and protection to prevent injuries from sharp objects (Official Gazette No. 84/2017, 17/2017) has been replaced by the new one.

The purpose of the ordinance is to transpose Council Directive 2010/32/EU of 10 May 2010 into Croatian law, implementing the Framework Agreement on prevention of injuries from sharp objects in the hospital and healthcare sector concluded by HOSPEEM and EPSU. The new ordinance compared with the previous one is more detailed. It contains, for instance, provisions on the joint obligations of employers, employees and employee representatives and provisions on monitoring, evaluation and quality assurance measures for the implementation of protection measures. The previous ordinance did not contain such measures.

2 Court Rulings

2.1 Judicial protection against employers' warnings of disciplinary action

Constitutional Court, No. U-III-1310/2018, 10 March 2020

A university teacher was warned in a disciplinary action that in case she is accused of another misconduct, she will be dismissed, and she was additionally fined with a 10 per cent salary decrease for the following six months. She brought the case before the administrative court, claiming protection against the warning and the fine. According to case law of the regular courts, in labour law cases, there is no judicial protection against such warnings and other disciplinary sanctions issued by the employer. Employees can claim judicial protection against a dismissal, but not against warnings by which the employer warns the employee that he/she will be dismissed in case of another misconduct. Since the administrative courts of first and second instance dismissed the claim in line with established case law, the claimant went before the Constitutional Court of the Republic of Croatia, claiming that those decisions were a breach of her right to a fair trial. The Constitutional Court [confirmed](#) that her right to a fair trial had been breached and that the administrative court should have ruled on the merits of the case (and decide whether the warning as an administrative act issued by the public institution (the faculty) had been issued in accordance with the law).

The consequence of this decision could be as follows:



- either a change in case law in the sense that judicial protection against warnings and fines in disciplinary actions by employers will be guaranteed to all employees (regardless whether the employer is a public institution or an employer in the private sector), or
- there will be no judicial protection against such warnings unless the employer is a public institution in accordance with established case law, but such protection will apply to employees whose employers are public institutions. Private sector employees would then be in a less favourable position compared to employees employed by a public institution, although the Labour Act applies to both categories of employees. The Labour Act applies in cases of *lacunae iuris* in the Act on Science Activity and High Education and in the Act on Institutions.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Cyprus

Summary

This report examines the emergency measures to contain the spread of the COVID-19 pandemic in Cyprus and its impacts on labour, as well as a court ruling on emergency cuts of the wages of public sector workers.

1 National Legislation

1.1 Emergency measures to restrict the COVID-19 pandemic

1.1.1 Extent of lockdown

In April, Cyprus witnessed the continuation of the lockdown which has affected labour relationships as a result of the outbreak the coronavirus pandemic. During April, travel was restricted: only cargo and those with exceptional leave permits were allowed to travel. Those who arrived in Cyprus, were placed in a 14-day quarantine.

By the end of April, as the number of new infections receded, the debates shifted towards how to return to 'normality' and 'open the economy'.

The checkpoints along the ceasefire line separating the south (the Republic of Cyprus) from the north (the Turkish occupied "Turkish Republic of Northern Cyprus". See Council of Ministers (2020), Series of [measures](#) decided by the Ministerial Council for addressing the coronavirus epidemic (*Σειρά μέτρων αποφάσισε το Υπουργικό Συμβούλιο για αντιμετώπιση της επιδημίας του κορωνοϊού*), 28 February 2020) have remained closed since 7 March 2020. The Ministry of Health has issued numerous decrees, the Quarantine Law (Ministry of Health (2020), Decree issued under the Quarantine Law Cap. 260 Para. 6(c) and 6(d)). The closure of the checkpoints has made it impossible for Turkish Cypriots to access benefits, services and rights in the Republic of Cyprus, including access to hospitals, government services and their jobs in the south. The checkpoints separating the north from the south remain shut even though, following the lockdown imposed by the Turkish Cypriot authorities, COVID-19 infections have reduced to zero. A group of 1 525 Turkish-Cypriots residing in the north but working in the south wrote to the President of the Republic [requesting](#) access to their jobs on 4 May when their workplace planned to commence its activities (Kafkalias, G. (2020) 'Δημοσιοποιούν επιστολή προς τον Πρόεδρο της Δημοκρατίας: Ζητούν εξαίρεση 1.525 Τ/Κ', Politis, 27/04/2020). Turkish-Cypriots undergoing treatment in hospitals in the south also applied to the President for permission to cross the checkpoints for urgent medical treatment (Consultation with officers of the Ministry of Labour and Ministry of Justice, 4 May 2020). NGOs and human rights groups have criticised the Cypriot government for not including the opening of checkpoints in its plans to relax the lockdown. The chief scientist of the advisory committee to the Government has [expressed](#) his misgivings about opening the checkpoints because of the relations between the Turkish Cypriot community and Turkey, where there is a massive spread of the virus (Sigma (2020) 'Κωστρίκης: Το μεγάλο πρόβλημα όταν ανοίξουν τα σύνορα-Ανησυχία για οδοφράγματα', 22 April 2020.).

On 23 March, a set of new measures were [declared](#), which entered into force on 24 March 2020 at 6 pm (In-Cyprus (2020) 'Coronavirus: Full text of address of President Anastasiades announcing the lockdown', 22 March 2020). The measures were stated to expire on 13 April 2020, but were extended until the phased return to normal trade relations and free movement. The measures imposed a ban on movement for all except in specified cases. Strict observance with the measures will be monitored by the police and the Army, and failure to comply will carry a penalty of EUR 150; the penalty was then increased to EUR 300. Under the measures, all movements were prohibited except

persons going to work, the transport of goods for businesses allowed to operate, visiting the doctor or pharmacy, for banking purposes that cannot be done online, people visiting others who are not able to take care of themselves or who are confined at home, to go out for physical activities or to walk pets, provided they remain in their neighbourhood, in groups of no more than two people. Parks, playgrounds, open areas for sports, picnic areas, open markets, bazaars and street vendors will be closed to the public, initially until April 13, but this measure was extended until the phased return to normality. Close relatives attending weddings, funerals or baptisms will not be restricted, either, providing they do not exceed a group of 10 people. Divorced parents are **permitted** to move to meet their children, and persons with disabilities are permitted to move to access treatment (Dialogos (2020), 'Νέο διάταγμα εξαιρεί διαζευγμένους και ΑμεΑ, αναστέλλει λειτουργία επιχειρήσεων πώλησης οχημάτων', 24 March 2020). Persons moving outside their homes are required to carry their IDs. People moving to and from their place of work must carry a certificate from their employers. All others who need to move must carry a completed form explaining the reason why they are moving or, alternatively, inform the authorities via SMS.

All private businesses were closed except:

- Food and drink sellers (supermarkets, grocery stores, butchers, fishmongers, bakeries, pastry shops, wine cellars), pharmacies, gas stations, establishments that sell food and drink services provided they do so by delivery (restaurants, coffee shops, bars), establishments providing drive through services, kiosks and mini markets.
- Health services (clinical labs).
- Car wash businesses, provided they adhere to all announced prevention measures.
- Businesses and workshops for disabled and orthopaedic merchandise.
- Businesses and workshops of medical and industrial gases and machinery.
- Opticians and their workshops.
- Businesses selling hearing aids.
- Car and motorbike workshops.
- Businesses selling tires.
- Businesses selling and repairing bicycles.
- Dry cleaners.
- Courier services.
- Businesses selling pet food or vet medicine.
- Telecommunication providers (for bill payments, renewal of credit, repairs and replacements of mobile devices).
- Businesses selling pesticides, fertilisers and other agricultural equipment.
- Funeral offices.
- Flower shops and plant nurseries

All retail businesses that were allowed to remain open must adhere to all measures announced to prevent the spread of COVID-19, including ensuring that no crowding takes place inside stores (one person per 8 m²).

Places of worship were closed.

There has been strong criticism by human rights NGOs that very few measures were taken to disseminate either the protection measures or the restrictions in sign language, in braille or in an easy-to-read format for persons with disabilities. No measures were taken to alleviate the problems created by the crisis for persons with disabilities. A number of municipalities and other organised groups continued the operation of their informal solidarity networks offering to bring groceries and to otherwise take care of other needs of elderly and other vulnerable persons in their vicinity.

Supermarkets and pharmacies were open on Saturdays and Sundays from 6am until 10am exclusively for persons aged 60+, persons with disabilities and other vulnerable persons. On 30 March, further closures of businesses and restrictions were imposed, including a curfew between 9.00 pm till 6.00 am (Ministry of Health (2020), [Decree](#) issued under the Quarantine Law Cap. 260 Para. 6(c) and 6(d), (Περί Λοιμοκαθάρσεως (Καθορισμός Μέτρων για Παρεμπόδιση της Εξάπλωσης του Κορωνοϊού COVID-19 Διάταγμα (Αρ. 12) του 2020), ΚΔΠ 135/2020, Ε.Ε. Παρ.ΙΙΙ(1), Αρ. 5236, Σελ. 522, 30/3/2020). From 4 May, there will be a phased opening of many businesses; the curfew will continue until 18 May.

As of 10 March, the Council of Ministers announced the closure of all schools and kindergartens. All kindergartens, schools and universities of all districts were closed. The Ministry of Education instructed teachers at all levels to introduce measures to teach through online platforms, starting from mapping the connectivity and equipment of the families they could reach. According to the teachers' unions, many homes were ill-equipped with devices and were connected to Wi-Fi, the implementation of online teaching in public primary and secondary education was sporadic and faced problems. Teachers have [reported](#) difficulties reaching families of migrant and refugees who do not speak Greek, families whose parents are not computer literate and could not support their children in joining the endeavour and a great number of families whose only equipment is one mobile phone for the entire family (Politis (2020), Teleteaching days (Ημέρες τηλεδιδασκαλιών), 30 March 2020).

The implementation of the system to provide distant teaching and provide pedagogical support to all public schools was slow and did not begin until after the Orthodox Easter.

Although private schools were able to start distance learning within a few days after the lockdown started, tens of thousands of students in primary, secondary and tertiary public education were still without daily contact with their schools for two months after the lockdown started. The reasons were the failure of the Education Ministry to convince primary and secondary education teachers to follow uniform distance learning programmes, the absence of proper planning and training on the part of the Ministry and the focus given on students in the third grade of the lyceum to prepare them for the final national exams. Distance learning for lyceum students started on 15 March as the government was adamant that the exams should not be postponed. The exam material will only include what was taught in class. The Ministry of Education handed out 6 000 tablets to secondary education and 65 000 users used the programme Teams. However, even though tens of thousands of students had received codes for the programme Teams, distance learning did not start until the last week of April due to weaknesses [reported](#) by the schools (Hanni, G. (2020), 'Μεγάλη πληγή της κυβέρνησης τα σχολεία', *Stockwatch*, 24 April 2020). The second phase of distance education commenced with the issuance of new instructions from the Ministry of Education on 23 April, which were met with strong reactions from both students' and teachers' organisations, warning that inequalities between students were being further entrenched as not all students had been provided with the necessary equipment and connectivity to join the online meetings. Additional concerns [expressed](#) included the fact that the exam material was still unclear and that the total of two hours and 15 minutes of teaching every day is not sufficient (Dialogos (2020), 'Μπάχαλο στον τομέα της εκπαίδευσης – Έμεινε στις διακηρύξεις το Υπ. Παιδείας', 25 April 2020). The Primary Teachers Union [announced](#) that two months after the pandemic lockdown, about 2 000

primary school children still do not have appropriate devices for distance learning, such as tablets or computers at home (Diadraseis (2020) “Ανοιγμα σχολείων ως παιδοφυλακτήρια;” Dialogos, 3 May 2020).

The Ministry of Education announced that on 11 May, the schools will gradually open with the final year of the lyceum returning first, one week after the introduction of first phase of the easing of the mobility restrictions. Initially, the government announced plans to the teachers’ trade unions that it intended to open nurseries and primary schools during the second phase of the easing of the measures on 18 May, however, this was met with strong rejections from parents and teachers. The vice-president of the Primary Teachers Union expressed concerns about the failure of the Ministry of Education to take measures to ensure a smooth return to schools for all students and teachers in a safe and hygienic environment, [claiming](#) that the reasons for the decision to open primary schools and kindergartens are not educational but primarily to facilitate the return of parents to work (Diadraseis (2020) “Ανοιγμα σχολείων ως παιδοφυλακτήρια;” Dialogos, 3 May 2020). The trade unions expressed concerns that the plans will exclude those who belong to vulnerable groups or who have siblings or parents who belong to vulnerable groups.

All universities have switched to online and distance learning and lecturers are now working from home.

1.1.2 Continuation of measures in social security and labour law

The measures announced in March pertaining to labour and social insurance still apply as does a set of measures on the operations of public service and the wider public sector, providing for flexible working schedule under restricted conditions, working from home where possible, a special partly paid leave of absence for only one parent with children aged 15 years and younger for up to four weeks, leave for persons belonging to vulnerable categories, such as persons aged over 60 years of age, persons with specific chronic illnesses, and pregnant women irrespective of age. Orders were issued for some enterprises to close down completely and for others to scale down their operations to avoid dismissals (Ministry of Finance (2020), ‘Instructions in relation to the operation of public service and the wider public sector under the extraordinary circumstances created for the prevention of the spread of the coronavirus in Cyprus’, Circular No. 1608, 17 March 2020). One trade union [reported](#) that employees were pressured into taking annual or sick leave and that some enterprises were dismissing employees in spite of the order (Offsite (2020), ‘Αυθαιρέτο τερματισμό απασχόλησης καταγγέλλει η ΔΕΟΚ’, 19 March 2020).

1.1.3 Social security

The Ministry of Labour’s special plan for vulnerable groups and social insurance continued to apply in April (Ministry of Labour, Social Care and Social Insurance (2020), [Decree](#) under the Emergency Measures taken to deal with the COVID-19 pandemic, Law 27(I)/2200, ΚΔΠ126/2020, Cyprus Gazette 5230, 28 March 2020). The benefit is calculated at 60 per cent of their regular income. The benefit is not granted if the person is receiving other benefits such as unemployment benefits, sickness benefits, or special leave for child care. Those who cannot continue working via telework or by other flexiwork means are excluded as well. The benefits that were scheduled to cease on 12 April were extended to cover all of April until the phased return to normality. The benefit is provided for the following persons:

- vulnerable persons who are defined by law
- those in quarantine;
- those who have suffered from COVID-19;

- those between the ages of 63-65 who have no pension
- those who receive certain benefits up the age of 65 and are not recipients of an institutional pension.

Another new allowance is parental leave for child care (Ministry of Labour, Social Care and social Insurance (2020), [Decree](#) under the Emergency Measures taken to deal with the COVID-19 pandemic, Law 27(I)/2200, ΚΔΠ127/2020, Cyprus Gazette 5229, 28 March 2020). The allowance has been applied retrospectively from 16 March and will continue until the resumption of work. Many employees in the public and private sector have taken advantage of this.

An issue that intensified during April is the position of workers in precarious work – they are in a vulnerable position. The Cypriot Network against Poverty [issued](#) a statement that Cyprus is facing the greatest poverty crisis of modern times (Cyprus Times (2020) 'Σειρά εισηγήσεων από το Κυπριακό Δίκτυο Ενάντια στη Φτώχεια', *Cyprus Times*, 27 April 2020). Workers in precarious jobs in non-standard employment were particularly affected by the lockdown measures and at the same time, could not access any of the benefits announced by the government (interview with trade unionist, 2 May 2020). The economic consequences of the lockdown and the bleak economic forecasts, with the Ministry of Finance estimating a possible double digit contraction of GDP have a severe impact on those working in precarious jobs. Cyprus is characterised by relatively high shares of non-standard employment and labour fragmentation (Ioannou, G. (2015). 'Labor force fragmentation in contemporary Cyprus', *Working USA: the Journal of Labor and Society*, Vol. 18, No. 4, 595-612) and by one of the highest adjusted wage gaps in the EU between permanent and temporary employees (Da Silva, A. and Turrini, C. (2015), 'Precarious and less well-paid? Wage differences between permanent and fixed-term contracts across the EU countries', *European Economy, Economic Papers No. 544*. The percentage of employees on temporary contracts [reached](#) 14.3 per cent in 2016 (compared to 11.2 per cent in 2008), 3.1 percentage points above the EU-28 average. The part-time employment rate stood at 13.3 per cent in 2016, below the EU-28 average of 18.9 per cent; albeit significantly higher than its pre-crisis level of 6.5 per cent in 2008 (Koutsampelas, C. (2018) 'Non-standard employment in Cyprus: Trends and policy responses', *Cyprus Economic Policy Review*, Vol. 12, No. 1, pp. 41-58 (2018) 1450-4561)).

Many workers in precarious jobs work in the informal sector, a large portion of whom are migrant workers, are irregular. The informal sector is [estimated](#) to account for over 25 per cent of the Cypriot economy, the sixth largest percentage in the EU; only eastern European countries have larger informal economies (OECD (2015) Policy Brief on Informal Entrepreneurship Entrepreneurial Activities in Europe, European Union/OECD, 2015). In Cyprus, informal wage employment is more prevalent than self-employment (Hazans (2011), "Informal Workers across Europe: Evidence from 30 Countries", *IZA Discussion Paper No. 5871*, Institute for the Study of Labor, Bonn; OECD (2015) Policy [Brief](#) on Informal Entrepreneurship Entrepreneurial Activities in Europe, European Union/OECD, 2015). Whilst non-standard employment is more likely to be carried out by women and young persons, following the financial crisis in Cyprus after 2012, non-standard employment increased considerably among men and persons with tertiary qualifications. Studies show how the crisis has adversely affected these precarious workers in terms of their rights (Demetriou, C., (2015), 'The impact of the crisis on fundamental rights across Member States of the EU: Country Report on Cyprus', Directorate General for Internal Policies, European Parliament) and their income and benefits (Ioannou, G. (2014). 'Employment in crisis: Cyprus 2010-2013'. *The Cyprus Review*, Vol 26, No. 1, 107-126). Inequalities in the labour market are translated into higher risk of in-work poverty and disparities in social provisions, mostly in regard to the adequacy of earnings-related benefits, including pensions (Koutsampelas, C. (2018) "Non-standard employment in Cyprus: Trends and policy [responses](#)", *Cyprus Economic Policy Review*, Vol. 12, No. 1, pp. 41-58 (2018) 1450-4561). In 2018, about 34 per cent

of Cyprus' population with a disability was at risk of poverty or social exclusion compared with 20 per cent with no limitation according to Eurostat figures (In-Cyprus (2019) '34% of population with disability at risk of poverty', In-Cyprus, 29 October 2019).

Most of precarious workers, particularly those in the informal sector, are not covered by the schemes announced by the Ministry of Labour, either because they are not protected by social insurance or because irregular third-country migrants are not allowed to work and risk deportation at any time they have interactions with the authorities.

1.1.4 Health and safety

An issue that has been important in public and employment debates is hygiene and safety measures at the workplace. The Ministry of Health issued a set of measures (Cyprus, Ministry of Health(2020), '[Guidelines for handling issues of coronavirus \(SARS-CoV-2\) at the workplace](#)' (Οδηγίες για αντιμετώπιση για τα θέματα κορωνοϊού (SARS-CoV-2) σε χώρους εργασίας), 4 May 2020) to be followed at the workplace, some of which are termed obligatory whilst others are vague and impossible to monitor: hand gel with >60 per cent alcohol at the entrance of every place of work fixed before entrance into the building, except where entrance is automatic; sufficient airing of the office space; one person per eight square metres in public areas; at least two metres distance between all persons; frequent washing of hands with soap and water or with gel containing 70 per cent alcohol; obligatory use of masks by workers serving the public, with instructions on how to wear, remove and dispose of them; daily cleaning and disinfection of high touch surfaces like door handles, office furniture, staircase banisters, water taps which must be strictly monitored; daily cleaning and disinfection of toilets and all restroom surfaces with liquid consisting of 1/99 chlorine; closure of toilet lid before flushing the toilet and washing of hands before and after using and cleaning the toilet; no crowding of workers in corridors or toilets, access to sufficient disposable prevention items like thermometers, simple surgical masks, single use gloves, bin bags and surface cleaning liquid. A protocol is set out on how to handle suspected incidents, which involves the isolation of the worker and the calling of an ambulance.

The Ministry of Education announced that students in the final grade of the lyceum will return to school to prepare for the final exam, however, the protection measures announced do not match the protection measures required for workplaces. For workplaces, there is a document of 18 pages, in schools, the instructions are only two pages. In workplaces, there is a risk assessment by the employer, which does not exist in the case of schools. In workplaces, a distance of two metres between persons is envisaged, whilst in schools, a distance of one metre between students is envisaged and two metres between students and teachers. In workplaces, the space per employee must be eight square metres whilst no such space is envisaged in schools. In workplaces, partitions must be installed if distancing is not possible, but this is not for the case in schools. In workplaces masks, thermometers and other disposables are planned which are not, however, envisaged for schools (Ministry of Health (2020), '[Instructions for COVID-19 prevention at schools](#)' (Οδηγίες για πρόληψη Covid-19 σε σχολεία), 29 April 2020; [Ministry of Labour, Welfare and Social Insurance \(2020\)](#), Οδηγός Διαχείρισης θεμάτων ασφάλειας και υγείας στην εργασία σε συνθήκες Κορωνοϊού). The difference in the measures envisaged for workplaces and schools suggest differentiated treatment between children and adult workers as well as less preferential treatment of teachers compared with other employees, which cannot be reasonably justified. It has now been announced that all schools will open on 21 May.

2 Court Rulings

Supreme Court, Avgousti and others v The Republic, 10 April 2020

There has been a major reversal in Cypriot jurisprudence on the issue of protection of salaries and the related benefits such as incremental pay raises and COLA in Supreme Court case *Avgousti and others v The Republic* (Case of Avgousti and others v The Republic, Supreme Court in its appellate function in the appeal against the Administrative Court decision (Εφέσεις κατά απόφασης Διοικητικού Δικαστηρίου Αρ. 177/18, 75/19, 76/19, 77/19, 79/19, 80/19, 84/19 και 85/19, 10 April 2020). The Supreme Court of the Republic of Cyprus has issued the long-awaited appeal decision against the Administrative Court ruling pertaining to the constitutionality and legality of the deduction in pay, increment pay raises and COLA of public sector employees, a measure imposed to address the financial crisis (reported in Flash Report 3/2019 for March 2019, Cases *Nikolaidis and others V Republic of Cyprus*, joined cases 98/2013, 244/2013, 290/2013, 6278/2013, 6279/2013, 6388/2013, 6415/2013, 6416/2013, 6417/2013, 6418/2013, 6419/2013, 6519/2013, 336/2014, 337/2014, 338/2014, 339/2014, 340/2014, 341/2014, 343/2014, 344/2014, 345/2014, 346/2014, 347/2014, 348/2014, 349/2014, 350/2014, 352/2014, 690/2014, 691/2014, 692/2014, 962/2014, 963/2014, 1392/2014, 1396/2014, 1473/2014, 1492/2014, 1539/2014, 1540/2014, 33/2015, 37/2015, 39/2015, 210/2015, 211/2015, 400/2015, 401/2015, 487/2015, 595/2015, 733/2015, 734/2015, 746/2015, 863/2015, 1053/2015, 1093/2015, 1178/2015, 1179/2015, 1180/2015, 1467/2015, 1469/2015, 1556/2015, 1557/2015, 1558/2015, 1569/2015, 1570/2015, 1672/2015, 1673/2015, 1674/2015, 1675/2015, 48/2016, 49/2016, 80/2016, 81/2016, 82/2016, 101/2016, 102/2016, 103/2016, 152/2016, 153/2016, 154/2016, 214/2016, 216/2016, 217/2016, 248/2016, 316/2016, 317/2016, 319/2016, 356/2016, 357/2016, 358/2016, 470/2016, 471/2016, 488/2016, 502/2016, 599/2016, 29 March 2019).

On 10 April 2020, during the COVID-19 lockdown, sitting in full house, the Supreme Court delivered a controversial 170-page long ruling that divided legal and public opinion; most legal practitioners and academics have strongly criticised the judgment as legally and constitutionally flawed.

The court was divided: the substantive part of the ruling for the majority is a mere 18 pages long (Nicolatos (President) and Judges Economou, Pamballis, Panagi, Stamatiou, Psara-Miltiadou, Malactos. Judge Yiasemis allowed the appeal but issued his own judgment); a separate judgment also allowing the appeal with a different reasoning (by Judge Yiasemis). The dissenting judgments provided a robust rebuttal in response to the arguments adopted by the majority (rejecting the appeal Judge Nathanael issued a separate judgment also signed by Judge Pougourou. Judge Liatsos also rejected the appeal and, whilst adopting the judgment of Nathanael, issued an additional reasoning. Judge Parparinos also rejected the appeal and issued his own judgment).

At first instance, the Administrative Court followed the Supreme Court precedent of *Koutselini* (Χαραλάμπους κ.ά. v. Δημοκρατίας, Υπόθεση Αρ. 1480/2011 κ.ά., 11.6.2014), which set out the framework of protecting the pension rights of public sector employees, in this case senior civil servants who receive a second and third pension, as a property as safeguarded under Art. 23 of the Cypriot Constitution and the ECHR: the Supreme Court ruled that the state could interfere to deny a pension as it was their property right. The Administrative Court ruled that if pensions were property, salaries, increment increases and COLA were certainly the property of the worker and as such, they enjoyed at least the same level, if not more, protection. Therefore, the Administrative Court upheld the appeal of civil servants and other workers of the wider public sector who challenged the decision before the Administrative Court to reduce their salaries following two laws introduced as part of the austerity measures taken after the financial and banking crisis in 2012 (Law 168(I)/2012 περί της Μείωσης των Απολαβών και των Συντάξεων των Αξιωματούχων, Εργαζομένων και Συνταξιούχων της Κρατικής Υπηρεσίας

και του Ευρύτερου Δημόσιου Τομέα Νόμο, and the amending Law 31(I)/2013, Article 3). They argued that the law is unconstitutional, violating the following:

- The right to property as safeguarded under Art. 23 of the Constitution of the Republic of Cyprus.
- Article 26 of the Constitution, which protects the right to freedom of contract, when, upon the applicant's recruitment to the state service, a contractual relationship with specific terms and conditions of employment and salary as provided for in the service plans is regulated and therefore, the Law violates an existing contractual relationship. Additionally, any interference with the contractual relationship occurs unilaterally.
- The provisions of Article 28 of the Constitution, which protects equal treatment, since it imposes a reduction in emoluments only for civil servants and pensioners in the state service and the wider public sector, but does not impose similar measures on employees or pensioners in the private sector.
- Article 1 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified in Cyprus by the Ratification Act 39/1962, since upon its receipt, the disputed measure did not respect the principle of equitable balance and proportionality with the payment of compensation to offset the loss of property.
- In case No. 244/2013, additional claims are raised by the applicant's lawyer that the measure imposed by the Law constitutes a devastating and cumbersome measure, taking into account the other financial charges imposed on the same class of workers, there is no adequate statement of reasons and there is no proper investigation in relation with the appropriateness of the measures that should be taken to achieve the desired objective.
- In cases No. 98/2013 and 290/2013, the applicants' lawyers furthermore claimed that Article 3 of the Law contradicts Article 9 of the Constitution, as the salary cuts are not linked to the determination of a minimum amount of remuneration or pension, which guarantees the right to a dignified living.

The Supreme Court reversed the decision, deciding that the deduction in salaries is not a violation of the right to property, as the above benefit amounts to a property right protected by Article 23 of the Constitution. The court relied on decisions of the Supreme Court in *Charalambous v The Republic*, which also dealt with the salaries of public sector employees and *Koutselini and others v The Republic* (Κουτσελίνη v. Δημοκρατίας, Υπόθεση Αρ. 740/2011 κ.ά., 7.10.2014). In *Charalambous v The Republic* where the Court ruled that the law on the extraordinary contribution of officials, Employees and Pensioners of the State Service and the Public Sector of 2011 (Law 114 (I) / 2011), according to which there was a monthly deduction of pensions and gross earnings of officials and employees in the public and wider public sector, and the pensions of pensioners as an extraordinary contribution falls under Article 23.1 of the Constitution, as a salary is a movable property. The Supreme Court rejected the Administrative Court's ruling that salary cuts cannot be linked to public benefits, since Article 23.3 of the Constitution links the promotion of public benefits with the imposition of conditions, commitments or restrictions on ownership for the purposes of town planning or the development and use of property.

The basic argument of the majority is as follows: whilst recognising that salaries are the property of the worker and are thus protected by law (Art.23 of Constitution, ECHR and the EU Charter of Fundamental Rights), the level of salary is not protected. The majority agreed that Article 23 of the Constitution offers greater protection as it is more restrictive than Art. 1 of the First Protocol of the ECHR. Case of *Koutselini* differed on the grounds that in that case, the law in full or in part deprived the applicant of pension, whereas in this case, the pension was only "limited, rationally scaled and for a restricted

time period” (p. 32). The Court instead relied on another earlier line of precedents, the case of *Charalambous v the Republic* and a Greek court decision to justify the reduction of salaries (p. 25) as long as ‘the nucleus of the right’ is not affected. The Court construed the ‘nucleus of the right’ here as a ‘decent standard of living’ (p.32). Citing the case of *Charalambous*, the Supreme Court stated that it “adopted the justified context of a pressing necessity in the light of the serious dangers of the collapse of the economy and the shaking of the foundations of the social fabric” (p.33). As for incremental pay raises, as provided in collective agreements which are based on pay scales and COLA, the majority of the Supreme Court judges ruled that these are provided subject to preconditions.

The minority judgment of Nathanael provides an alternative that counters all arguments of the majority, arguing that any restriction of rights can only be carried out under the constitutional framework, and any reduction in salaries must be legitimate, straightforward and cannot be offered post-festum. He stated that references to the public interest must be explicit, sound and immediate, and not merely a pretext for curtailing a right (p. 50). He noted that the appeal had not cited any constitutional provision to justify interference in the right to property (salary). The judge considered it odd that the stricter provisions of Art. 23 of the Republic of Cyprus Constitution to those contained in Art. 1 of the First Protocol to the ECHR and Art. 17 of the Charter of Fundamental Rights is not protected in this case. He considered that one cannot speak of a nucleus of rights in this context as the right to property is an absolute right, except in cases of expropriation in which case one must be granted reasonable compensation (p. 66).

Judge Nathanael also underlines that the salary has a special nature: it is simultaneously a protected property as well as reciprocal compensation for work (p. 69). Hence, in contrast to immovable property which may be thought of as an inactive property right or a right in inertia, the salary is a dynamic property right of a continuous nature, as long as labour is provided, which is compensated monetarily. The fact that the salary as a right is necessarily compensated monetarily means that its deprivation cannot be offset with another monetary compensation, nor is it acceptable for an employee to be paid any less. He concluded that the arguments about the decent standard of living as the core or nucleus of the right are wholly inappropriate and irrelevant in this context.

The decision of the Supreme Court has been widely criticised by trade unions, but praised by the employers, the governing party and the President of the Republic. Legal scholars and practitioners described the decision as “a historical backtracking” (Christos Clerides (2020) “Ακόμη ένα πισωγύρισμα στην προστασία των Ατομικών Δικαιωμάτων”, *Dikaiosini* 13/04/2020) a blow for human rights in the context of a process of receding human rights (Paraskeva, C. (2020) ‘Το Σύνταγμα και τα Ανθρώπινα Δικαιώματα’, Christophi, C. Paraskeva, C., *Δικαιοσύνη*, 29 April 2020) and plainly “wrong” (Georgiou, V. (2020) “Λανθασμένη η απόφαση της πλειοψηφίας του Ανωτάτου για τις αποκοπές μισθών” *Δικαιοσύνη*, 12 April 2020; Saouris, A. (2020) “Προβληματισμοί από την απόφαση του Ανωτάτου Δικαστηρίου για τις περικοπές των δημοσίων υπαλλήλων” *Δικαιοσύνη*, 12 April 2020; Emilianides, A. (2020) “Δικαίωμα στην ιδιοκτησία και περικοπές μισθών και συντάξεων δημοσίων υπαλλήλων” *Δικαιοσύνη*, 12 April 2020). The notion of “the nucleus” or “the core” of the right when it comes to the protection of a property right like the salary is seen by legal scholars and practitioners as nonsensical and inappropriate in this context (Christos Clerides (2020) “Ακόμη ένα πισωγύρισμα στην προστασία των Ατομικών Δικαιωμάτων”, *Dikaiosini* 13/04/2020, Emilianides, A. (2020)). The decision is the latest in a string of decisions adjudicating the government decisions that are curtailing rights and benefits of workers by invoking the dire situation of public finances, in what can be read as another extension of the state’s necessity arguments as justification to restrict labour rights and benefits, in the broader proliferation of the Cypriot states of exception at the expense of labour rights and constitutional law as legitimate justification (see Trimikliniotis, N. (2019) “The

proliferation of Cypriot states of exception: The erosion of fundamental rights as collateral damage of the Cyprus problem”, *Cyprus Review*, 2018, Fall Vol. 30). What is also odd is that only Judge Nathanael dealt with the uniqueness of the salary of workers; however, there was no debate or reference to the debates on the nature of the salary in European labour law.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Trade unions and NGOs have called for more support measures. There are five new schemes in place to support workers affected by the crisis: the scheme on special leave to care for children, the special grant for illness, a scheme for self-employed persons and a scheme of partial or full suspension of operations of an undertaking. These measures have already been in place since 16 March 2020 until 12 April 2020, and were then renewed for a further period until 12 May 2020 with a number of minor revisions, mainly regarding the retroactive effect of a minimum monthly subsistence sum and the extension of the scheme to include persons who started working for the first time in February and March 2020. In addition to these existing schemes, a new scheme was [introduced](#) for those who are unemployed and have exhausted their regular unemployment benefits; under the new scheme, a special grant of EUR 360 will be paid (Offsite (2020), ‘Υπ. Εργασίας: Τι άλλαξε στα Σχέδια Στήριξης Εργαζομένων’, 03 May 2020. For more information about the schemes, see the webpage of the Ministry of Labour [here](#)). There were several complaints from persons eligible for the benefits about delays of several weeks in receiving the money. The Labour Minister [attributed](#) the delays to the large volume of applications and to mistakes in applications mainly from migrant workers, adding that even the slightest mistake means that the application cannot be processed and urging employers to complete and file the applications themselves (Phileleftheros (2020), ‘Τι απαντά το Υπ. Εργασίας για την καθυστέρηση στα επιδόματα’, 29 April 2020).

Czech Republic

Summary

(I) The measures adopted in connection with the COVID-19 crisis include the carer's allowance, state financial aid for employers and the abolition of the condition of not having arrears in tax or other public administration payments for the purpose of receiving state contributions has been suspended under the Antivirus programme.

(II) The Supreme Court has issued a ruling on a transfer of undertaking, while the Supreme Administrative Court has ruled on the recognition of trade unions.

1 National legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Extraordinary measures of the government - update

The Government of the Czech Republic has declared a state of emergency in response to the COVID-19 crisis. The state of emergency has been extended repeatedly (see below).

The government and the individual ministries (as well as other authorities) have adopted a number of extraordinary measures with the aim of containing the spread of COVID-19. We reported the most relevant measures in the March 2020 Flash Report. This report presents recent developments.

Prior to proceeding with the individual extraordinary measures, a recent ruling of the Municipal Court in Prague of 23 April 2020, file No. 14 A 41/2020, must be mentioned, by which the court annulled some of the extraordinary measures adopted by the Ministry of Health (restricting the retail sale of goods and the provision of services in establishments as well as the restriction of the free movement of persons), as they were issued without following the appropriate procedure and form, and were contrary to the principle of separation of powers and the rule of law, i.e. they ought to have been issued by the government (pursuant to Act No. 240/2000 Coll. the Crisis Management Act) within the regime of the state of emergency (not by the Ministry of Health according to public health legislation, i.e. Act No. 258/2000 Coll. on Protection of Public Health). The government has since re-issued the measures based on the proper procedure and form – the measures have, however, been slightly eased (see below).

The government has also lifted the measures prohibiting Czech citizens from leaving the Czech Republic (probably under the pressure of legal experts and some senators – see below).

- **Declaration of state of emergency Measures:**

[Resolution of the Government](#) No. 156/2020 Coll. issued on 09 April 2020 as Resolution No. 396 (published)

Summary:

As already mentioned, the government declared a state of emergency with effect as of 12 March 2020. The state of emergency was declared for 30 days (with an extension subject to approval of the Chamber of Deputies of the Parliament of the Czech Republic).

On 09 April 2020, the government extended the duration of the state of emergency until 30 April 2020 (based on approval of the Chamber of Deputies of the Parliament of the Czech Republic of 7 April 2020).



On 29 April 2020, the Chamber of Deputies of the Parliament of the Czech Republic approved another extension of the state of emergency until 17 May 2020.

Under the state of emergency, the government is authorised to issue extraordinary measures (and impose restrictions on rights of persons – see updates below).

- **Reintroduction of border controls**

Measures:

[Resolution of the Government](#) No. 70/2020 Coll. issued on 12 March 2020 as Resolution No. 197 (published)

[Resolution](#) of the Government of 15 March 2020 No. 221 approving Measures of a General Nature

[Annex](#) to this Resolution

[Resolution](#) of the Government of 23 April 2020 No. 444 on extension of the reintroduction of border controls and annexed Measures of a General Nature of 23 April 2020

[Annex](#) to this Resolution

Summary:

With effect as of 16 March 2020 (0:00), border controls were reintroduced for the land borders with Germany and Austria and for air borders. The land border with Germany can only be crossed at certain designated places / certain designated times. To cross air borders, only the airports in Prague and Kbely can be used.

Border controls have been extended until 14 May 2020 (23:59). They are subject to further extensions.

- **Restrictions in international transport**

Measures:

[Resolution of the Government](#) No. 73/2020 Coll. issued on 12 March 2020 as Resolution No. 200 (published)

Summary:

From 14 March 2020 (0:00), all international road (for vehicles for 9 or more passengers), rail and air transport (for passengers) is prohibited. Air passenger transport is also limited (only the Prague airport can be used for cross-border travel). Freight transport is allowed. Further exceptions include:

- international occasional passenger road transport (in vehicles with a capacity exceeding 9 persons) of Czech citizens and foreign nationals with temporary residence permits over 90 days or permanent residence permits in the territory of the Czech Republic, who are returning to the Czech Republic;
- international occasional passenger road transport (in vehicles with a capacity exceeding 9 persons) of foreign nationals leaving the territory of the Czech Republic.

- **Travel ban**

Measures:

[Resolution of the Government](#) No. 193/2020 Coll. issued on 23 April 2020 as Resolution No. 443 (published)

Summary:

With effect as of 27 April 2020 until the end of the state of emergency, the entry into the territory of the Czech Republic is banned for all foreign nationals who do not have temporary residence permits for more than 90 days or permanent residence permits with the following exceptions:

- family members of Czech citizens or EU citizens with temporary or permanent residence permits;
- EU nationals and foreign citizens with a visa for stays in the EU and who pass through the Czech Republic to return home and have a pass permit for that purpose issued by their embassy;
- persons whose entry into the territory is in the interest of the Czech Republic;
- cross-border workers, pupils, and students who regularly cross the border of the Czech Republic with neighbouring states for the purpose of performing work or studies;
- workers in transnational transport;
- service workers of critical infrastructure;
- diplomats and officials of international organisations;
- EU citizens who enter the territory of the Czech Republic (demonstrably) to perform economic activities for a period of no longer than 72 hours (after submitting a test with a negative COVID-19 result);
- EU citizens who enter the territory of the Czech Republic to perform economic activities or for the purpose of studies (after submitting a test with a negative COVID-19 result);
- other extraordinary situations.

The reasons above must be adequately documented (proven).

Czech citizens and foreign nationals with temporary or permanent residence permits can enter the territory of the Czech Republic.

All persons entering the territory of the Czech Republic have the obligation to notify the competent hygiene office (with certain exceptions, especially in cases where a test with a negative COVID-19 result is presented). The hygiene offices are required to order a 14-day quarantine for persons entering the territory of the Czech Republic (with exceptions).

With effect as of 27 April 2020, the ban on leaving the territory of the Czech Republic has been lifted (for all persons). However, transport restrictions and border controls may still impede travel.

A negative COVID-19 test (RT-PCR) must be provided and documented by a physician or public health authority and may not be more than 4 days old.

- **Restrictions on the provision of goods and services**

Measures:

[Resolution of the Government](#) No. 195/2020 Coll. issued on 23 April 2020 as Resolution No. 453 (published)

Summary:

With effect as of 27 April 2020, the government has reissued a ban on the retail sale of goods and provision of services in establishments (i.e. shops).

The ban applies with certain explicitly listed exceptions (the list of exceptions has been growing and will continue to grow – see below).

With effect as of 27 April 2020, the presence of customers in eateries and other similar establishments is prohibited. This does not apply to establishments that are not open to the public (such as employee eateries, prison eateries, etc.). This also does not apply to sales outside the premises of the actual establishment (e.g. through take-out windows).

With effect as of 27 April 2020, the sale in eateries in shopping centres with a sale space exceeding 5 000 m² is prohibited.

With effect as of 27 April 2020, the operation of casinos and arcades, and taxi services is prohibited.

With effect as of 27 April 2020, the presence of customers in establishments of providers of sport services is prohibited, with the exceptions of gyms and fitness centres (where, however, strict hygiene rules must be observed).

With effect as of 27 April 2020, the provision of accommodation services is prohibited with the exception of providing accommodation services to persons for the purpose of performance of a profession, business, or similar activities, to foreign nationals for the period before leaving the Czech Republic and to foreign nationals with a work visa for the territory of the Czech Republic, to persons who have been ordered to quarantine, and to persons at risk of domestic violence.

Trying on clothes in shops is prohibited.

Establishments that are allowed to sell goods or services must adhere to special rules (e.g. they must adopt measures to ensure a distance of at least 2 metres between persons, must provide disinfectant, must ensure that their workers are wearing gloves, etc.).

According to the plans published by the government, the restrictions imposed on establishments that sell goods and services should be lifted in stages – on 11 May 2020, shops in shopping malls, museums, galleries, hair salons, etc. will open; on 25 May 2020 restaurants, cafes, theatres, taxi services, etc. will open, and in June, the remaining establishments will open (probably also in several stages – information is not yet available).

- **General restrictions on the free movement of persons**

Measures:

[Resolution of the Government](#) No. 194/2020 Coll. issued on 23 April 2020 as Resolution No. 452 (published)

Summary:

With effect as of 24 April 2020, restrictions on the free movement of persons have to a large degree been lifted.

With effect as of 24 April 2020, the government determined that persons can be present and move in publicly accessible places in groups not exceeding 10 persons (this limit does not apply to groups of household members, the performance of professional, business or other similar activities, and funeral attendance). A distance of at least 2 metres from other persons must be maintained (if possible).

With effect as of 24 April 2020, it is prohibited to consume food and beverages in the places where they are sold (with exceptions – e.g. food and beverages may be consumed 10 or more metres from a take-out window).

With effect as of 24 April 2020, sports on outdoor sports grounds, in parks, in nature, or other publicly accessible places can be practiced under the following conditions:

- respiratory protective equipment must be worn (with the exception of

outdoor sports where persons are separated by physical obstacles or are more than 2 metres apart);

- groups may not exceed 10 persons (this limit does not apply to household members) and a distance of at least 2 metres must be kept from other persons;
- adjacent indoor spaces may not be used (such as locker rooms and toilets, with exceptions) – increased hygiene measures must be adopted.

Specific rules apply to professional athletes and their training.

Specific rules are further set forth for religious services and weddings, as well as for the operation of civil associations.

- **Prohibition of free movement of persons not wearing respiratory protective equipment (of mouth and nose)**

Measures:

[Resolution of the Government](#) issued on 09 April 2020 as Resolution No. 402

[Extraordinary measure of the Ministry of Health](#) of 09 April 2020, file No. MZDR 15757/2020-2/MIN/KAN

Summary:

With effect as of 09 April 2020, the Ministry of Health has issued an order by which the movement and presence outside place of residence is banned for all people not wearing protective face equipment (such as respirators, drapes, face masks, headscarves, etc.) to contain the spread of COVID-19.

This does not apply to:

- public transport drivers who are separated from the space designated for the transport of passengers;
- children under 2 years of age;
- persons with severe autism spectrum disorders; and
- drivers of closed vehicles if driving alone or with members of their household.

This regulation also applies to employees at the workplace. The employer can supervise adherence to the obligation to wear protective face equipment (non-adherence is considered a breach of duty). The employer is, however, not generally required to provide employees with such equipment.

- **Ban on personal attendance in schools and other similar facilities**

Measures:

[Resolution of the Government](#) No. 197/2020 Coll. issued on 23 April 2020 as Resolution No. 455 (published)

Summary:

With effect as of 27 April 2020, the ban on personal attendance in schools and other similar facilities (which was depicted in the previous Flash Report) was re-adopted by the government.

The extraordinary measure of the Ministry of Health, however, includes certain exceptions for university studies – the ban on personal attendance does not apply:

- to individual visits of libraries and study rooms for the purpose of picking up and returning literature;
- to consultations and examinations with the presence of a maximum of 5

persons;

- to laboratory, experimental, and art activities for the purpose of completion of final theses with the presence of a maximum of 5 persons; and
- to clinical and practical teaching and practice.

For the above exception to apply, however, the following conditions must be met:

- present persons must not have any symptoms indicating a COVID-19 infection;
- present persons must use hand sanitiser made available by the university before entry into the facility;
- present persons must not be under ordered quarantine;
- present persons must sign an affidavit affirming that they have not had COVID-19 in the past 14 days.

1.1.2 Carer's allowance - update

[Draft Act amending Act No. 133/2020 Coll. on certain adjustments with regard to social security in connection with the extraordinary measures during the 2020 epidemic](#) has entered the legislative procedure (the Draft Act has been approved by the Senate of the Czech Republic).

In the March 2020 Flash Report, we informed of new rules for the provision of the so-called 'carer's allowance'.

Carer's allowance is a sickness insurance benefit provided by the Czech Social Security Administration (hereinafter: CSSA) in the amount of 60 per cent of the so-called 'reduced daily basis' (calculated on the basis of the employee's salary) to employees who cannot provide care for their child or other dependent in any other way and must stay home with them (such employees are not entitled to a salary). It is generally only provided to employees employed under a regular employment contract (i.e. not to employees employed under a zero-hours contract, i.e. so called 'DPP' and 'DPČ').

New rules have been adopted for the duration of the extraordinary measures to cover more employees.

The Draft Act introduces further changes:

- the new rules will apply until 30 June 2020;
- from 01 April 2020 until 30 June 2020, the amount of the carer's allowance is set to 80 per cent (instead of 60 per cent) of the reduced daily basis;
- the carer's allowance is also provided to employees who are employed under a zero-hours contract for the duration of such contracts (this only applies to contracts concluded before 11 March 2020) – such employees must, however, participate in a state sickness insurance scheme, at least during the month prior to the month in which the need for care arose.

After 30 June 2020, at the latest, the rules for the provision of the carer's allowance will revert back to the previously applicable ones.

The Draft Act was approved by the Senate of the Czech Republic on 29 April 2020. It has to be signed by the President and published in the Collection of Laws to enter into force.

1.1.3 State financial aid for employers - update

The Government of the Czech Republic adopted [Resolution](#) of 31 March 2020 No. 353 on a targeted programme to support employment. By means of this resolution, the government approved so-called 'Antivirus' programme. This programme intends to support employment and to help employers overcome the impacts of the COVID-19 crisis.

Subsequently, the Government of the Czech Republic adopted [Resolution](#) of 27 April 2020 No. 481 on extension of the Antivirus programme until 31 May 2020.

Under this programme, employers who provide salary compensation to employees to whom they cannot allocate work due to various obstacles to work (i.e. where employees are furloughed but kept on the employer's payroll) may apply for state assistance (for a partial reimbursement of their costs).

The state contribution is provided under the following two regimes (reduced from the originally proposed five regimes previously reported):

- Regime A

Under Regime A, employers can apply for a state contribution for partial reimbursement for providing salary compensation to employees for the duration of the following obstacles to work:

- a) employee quarantine (ordered by a physician or public health authority) in connection with COVID-19 (where the employer provides the employee with a salary compensation in the amount of 60 per cent of his/her reduced average earnings for the first 14 days of quarantine);
- b) shut down of operations or restricted operations based on official measures (national and foreign) in connection with the COVID-19 crisis (where the employer provides the employees with a salary compensation in the amount of 100 per cent of their average earnings).

The state contribution provided under Regime A covers 80 per cent of the salary compensation paid by the employer to employees due to the relevant obstacles (including health and social security contributions). The upper limit per month per employee is CZK 39 000 (i.e. approx. EUR 1 429)

- Regime B

Under Regime B, employers can apply for state contribution to partially reimburse them for providing salary compensation to employees for the duration of the following obstacles to work:

- a) absence of a significant number of employees due to obstacles on their part (where the employer provides the employees with 100 per cent of their average earnings);
- b) drop in availability of inputs (where the employer provides the employees with 80 per cent of their average earnings);
- c) decrease in demand for the employer's products and services (where the employer provides employees with 60 per cent of their average earnings).

The state contribution provided under Regime B covers 60 per cent of salary compensation paid by the employer to employees due to the relevant obstacles (including health and social security contributions). The upper limit for such contributions per month for one employee is CZK 29 000 (i.e. approximately EUR 1 062).

The above only applies to obstacles to work that arose after 12 March 2020. The Antivirus programme was originally approved until 30 April 2020, however, it has now

been extended until 31 May 2020. Any further extensions are subject to government approval.

The state contribution is based on an agreement on the provision of state contribution concluded between individual employers and the state (i.e. the Labour Office). Employers must submit a written application for the conclusion of such an agreement (the application process opened on 06 April 2020). If all of the requirements are met, the Labour Office is obliged to conclude such an agreement. After the agreement is concluded, the employer shall submit a form entailing information on the employees for whom the contribution is being claimed, on the obstacles that are preventing these employees from performing work, and on the compensation of salaries and insurance contributions paid by the employer. Based on the information provided in the form, the concrete amount of the state contribution is provided by the Labour Office. The entire process is electronic and contactless.

The requirements that must be fulfilled in order for the employer to be able to claim the state contribution are as follows:

- the employer must always proceed in accordance with the Labour Code and with the measures and recommendations of the Ministry of Health and other public health authorities (unless there are objective reasons preventing the employer from doing so);
- the employer cannot allocate work to employees based on one of the obstacles stated above;
- the employees (for whom state compensation is claimed by the employer) have to be employed based on a regular employment contract (not a zero-hours contract, i.e. so-called 'DPP' or 'DPC'), must participate in a pension and sickness insurance scheme, and must not have been issued a notice of termination by the employer (with the exception of a termination of employment due to violations of obligations or due to non-fulfilment of work requirements);
- salary compensation in the above-stated amounts, including health and social security insurance contributions, must be paid before the employer receives state contribution;
- the employer does not draw any other contributions from public funds for the same purpose;
- the employer was not convicted and fined in connection with illegally employing foreign nationals;
- the employer has no arrears in tax and other public administration payments (this requirement no longer applies – see below).

For the sake of completeness, the "*Handbook for Employers regarding the Antivirus Programme*" created by the Ministry of Labour and Social Affairs is available [here](#) (in EN).

Conditions for subsidies

[Act No. 161/2020 Coll. on certain adjustments in the area of employment in connection with extraordinary measures during the 2020 epidemic, and on an amendment of Act No. 435/2004 Coll. on Employment](#), has been adopted and published.

As stated above, in order for the employer to be able to claim state contribution under the Antivirus programme, one of the original conditions was that the employer had no arrears in tax and other public administration payments.

Act No. 161/2020 abolishes this condition (for the duration of the relevant extraordinary measures adopted by the state authorities during the 2020 epidemic) and employers

may successfully claim the state contribution, even if they have arrears in tax or other public administration payments.

The Act entered into effect on 14 April 2020.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Transfer of undertakings

Supreme Court, No. 21 Cdo 1148/2019, 28 January 2020

The Supreme Court has [ruled](#) on what constitutes a "significant deterioration of working conditions" in connection with transfers of undertakings. The decision was issued on 28 January 2020 under file No. 21 Cdo 1148/2019.

Act No. 262/2006 Coll. the Labour Code (hereinafter: Labour Code) states that

"if the employee has given the employer a notice of termination of employment within 2 months from the date of entry into effect of the transfer of employment rights and obligations or the entry into effect of the transfer of exercise of employment rights and obligations, or if the employee's employment was terminated by agreement within the same period, the employee may apply to a court to decide that the termination of employment occurred due to a significant deterioration of working conditions in connection with the transfer".

Should the employee be successful, s/he would be entitled to severance pay (to which employees are otherwise only entitled to when the employment relationship is terminated by the employer) in accordance with Article 4(1) of Directive 2000/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (hereinafter: Directive 2000/23/EC):

"If the contract of employment or the employment relationship is terminated because the transfer involves a substantial change in working conditions to the detriment of the employee, the employer shall be regarded as having been responsible for termination of the contract of employment or of the employment relationship."

The term "significant deterioration of working conditions" is not defined by law and has not—prior to the present ruling of the Supreme Court—been interpreted by (higher) courts.

In the present case, a transfer of undertaking had taken place. One of the employees affected by the transfer terminated his employment relationship within 2 months of the transfer. He applied to a court to determine that a significant deterioration of his working conditions had occurred – according to the employee, this in particular included changes in the organisational structure and competences and responsibilities of the employee, change in the language of communication in the workplace, increase in overtime work, change in technological conditions (introduction of new IT technologies, different communication devices and channels), changes in reporting, and the introduction of a surveillance system (employee's desk was being monitored by a newly installed camera).

The Supreme Court stated that the term "working conditions" means not only working conditions that are regulated by the Labour Code (and related legislation), but rather

all conditions that affect the employee in the course of the performance of his or her work.

The Supreme Court further stated that when assessing whether a significant deterioration of working conditions has occurred, the courts may take economic, social, technical, technological, psychological, physical, physiological, as well as health and safety conditions into account under which the work is being performed by the employee, including difficulty of such work, its quantity, quality of the environment in which it is performed (which includes the quality of interpersonal relationships in the workplace), organisational changes, changes in the language of work communication, introduction of new programmes and control measures, level of control, new requirements with regard to reporting, etc. These factors must be evaluated in the light of the individual circumstances of a particular case.

According to the Supreme Court, the above must be assessed objectively – the subjective opinions of the employee and the employer are not decisive.

2.2 Recognition of a trade union

Supreme Administrative Court, No. 6 Ads 207/2019, 12 February 2020

The Supreme Administrative Court has [ruled](#) on the requirements that must be fulfilled for a trade union to be recognised by the employer. The decision was issued on 12 February 2020 under file No. 6 Ads 207/2019.

Pursuant to Section 286(3) of the Labour Code, a trade union may only operate within an employer's undertaking if it is "authorised to do so according to its statute and if at least three members of that trade union are in an employment relationship with the employer". The trade union needs to prove fulfilment of these conditions in order to be recognised by the employer.

In the present case, a trade union tried to prove the fulfilment of the conditions stated above to the employer by means of a signed affidavit.

The Supreme Administrative Court ruled that a signed affidavit is insufficient for the purposes of proving the fulfilment of the conditions.

It further ruled that not only must trade unions prove the fulfilment of the conditions mentioned above to start operating at the employer's undertaking, but the employer may require, should any doubts arise, that the trade union prove the fulfilment of the said conditions, even if the trade union has already done so in the past.

The Supreme Administrative Court has ruled that trade unions must prove to the employer (to operate at the employer's undertaking) that they are authorised to do so in their statute and that at least three of their members are in an employment relationship with the employer. A signed affidavit is insufficient for this purpose. The employer may request the trade union to prove fulfilment of the conditions above repeatedly, should (objective) doubts regarding the fulfilment of such conditions arise.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Denmark

Summary

The impact of COVID-19 in Denmark has been relatively low in comparison to neighbouring countries and is now slowly re-opening the country. Assistance packages were extended in time and in part also in scope. In connection with the gradual opening of many workplaces, the government has set guidelines for the responsible organisation of work in relation to COVID-19 and has activated a force majeure clause on daily and weekly rest periods. Furthermore, it has been clarified that illness due to COVID-19 may constitute an industrial injury. To avoid a higher infection rate, the government has introduced several initiatives aimed at reducing the risk of infection from cross-border employees.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

This section covers all (new) relevant measures introduced to mitigate the consequences of the COVID-19 crisis. Thus, it includes national legislation but is not limited hereto.

1.1.1 General information

Danish society was partially locked down by the government on 11 March 2020 due to the COVID-19 crisis. As of 15 April 2020, a slow and controlled partial reopening of society has begun due to the relatively low number of intensive care patients.

The opening applied to all childcare services, schools (up to the age of 11), and persons in vulnerable circumstances. It was soon extended to small businesses, such as dentists, hairdressers, psychologists, etc. The courts opened on 27 April. All other non-essential public employees must continue working from home.

Restaurants, bars, museums, shopping malls, etc. must remain closed. Other private employers are encouraged to let employees work from home until at least 10 May 2020, given that this does not negatively impact the company's value generation and productivity. The decision to open ultimately lies with the employer. Private employers are required to observe health guidelines and observe new administrative guidelines on the organisation of the work place (see more below). Many private employees are still working from home.

Public gatherings of more than 10 people are still prohibited. The government has recently announced that larger gatherings of more than 500 people will be prohibited at least until 01 September 2020, which has led to the cancellation of all summer festivals, sport events, etc. – at least those involving physical meetings. Many organisers are considering carrying out online events to some extent.

Many assistance packages were extended in time and some amendments have been made to the assistance packages to extend their coverage. Unemployment figures show an increase of 46 506 unemployed persons during the COVID-19 crisis, resulting in an unemployment rate of 4.1 per cent by the end of March, compared to a stable 3.7 per cent over the last year.

The next phase of the reopening of society will take place on 10 May 2020.

1.1.2 Extension of salary compensation to workers

The government, the Danish Confederation of Trade Unions (FH) and the Danish Employers' Confederation (DA) have agreed to a **time extension of the state-financed temporary salary compensation scheme** to employers at risk of introducing redundancies. The scheme has been extended by one month and thus currently expires on 8 July 2020.

The compensation scheme applies to all private companies that are anticipating redundancies of at least 30 per cent of their work force or of more than 50 employees. The compensation scheme is available on the conditions that employees are sent home from work with their full salary, and that the company does not dismiss any workers on economic grounds during the salary compensation period.

A press release on this issue is available [here](#).

1.1.3 Guidelines on responsible organisation of work

Private sector companies that want to allow employees to physically report to work again are required to observe health guidelines as well as a new set of [administrative guidelines on responsible organisation of work](#). The purpose of these guidelines is to reduce the risk of infection and create a safe environment for employees and customers.

The guidelines cover issues such as

- *the organisation of work* (e.g. employees must be placed two metres apart, employers are encouraged to consider shift work, external meetings should be conducted digitally);
- *the work space layout* (e.g. physical facilities must be arranged with a view to reducing the risk of infection and to ensure physical distance, canteens must adapt their current layout, including the closure of buffets);
- *conduct and hygiene* (e.g. water, soap and, if possible, hand sanitiser must be available to all employees, the company shall ensure rigorous cleaning of common points of contact);
- *handling of illness and symptoms* (e.g. employees with mild symptoms related to COVID-19 shall not report to work).

The Danish Working Environment Authority carries out inspections at enterprises and may in this connection supervise whether the guidelines are being correctly observed.

Binding guidelines for the organisation of a safe working environment for employees and citizens have also been issued for the public sector. This now also covers the public services that are part of the first wave of reopening society, such as childcare services, [schools](#), and certain [health services](#). The health guidelines are regularly updated, sometimes more than once daily. The Danish Working Environment Authority supervises adherence to the guidelines by the public services.

High-risk employees, e.g. employees with a chronic illness, pregnant employees, or those living in households with high-risk family members who are not displaying mild symptoms, must in principle also physically report to work – in both the private and the public sector. As a starting point, the [public health guidelines](#) that have been provided are being monitored by the Danish Working Environment Authority, and are expected to ensure a safe working environment. Parliament and the social partners are currently developing a more suitable and balanced solution for this group of people.

1.1.4 Recognition of COVID-19 as a potential work injury

The question of compensation for work injuries has been discussed in the media following the death of a 36-year-old health assistant (*social- og sundhedsassistent*) due to coronavirus. The health assistant worked in a hospital, providing care to hospitalised COVID-19 patients.

The Minister of Employment has now clarified that illness due to COVID-19 may constitute a work injury (accidents or occupational diseases related to the performance of work), if it is likely that the illness was caused by work. This may be the case if the employee has been exposed to infection or risk of infection in connection with work and subsequently falls ill.

Some types of work in themselves lead to a strong assumption that the employee has been exposed to infection at the workplace. This applies, for example, to employees in health services working in intensive care units and who are in direct contact with COVID-19 patients.

The assessment of work injuries in connection with COVID-19 is described further in the [Ministerial Guidelines](#) recently issued (21 April 2020) by the Danish Working Environment Authority.

The Labour Market Insurance (*Arbejdsmarkedets Erhvervssikring*) is responsible for carrying out specific assessments of all work injuries on a case-by-case basis.

The Act on Workers' Occupational Injury Insurance (*arbejdsskadesikringsloven*) is available [here](#).

1.1.5 Derogation from daily and weekly rest periods

Due to the COVID-19 crisis, the Ministry of Employment and the Danish Working Environment Authority introduced a force majeure clause on daily and weekly rest periods in the [Act on Occupational Health and Safety](#) (*arbejdsmiljøloven*).

Whereas employees are usually entitled to a daily rest period of at least 11 consecutive hours within each 24-hour period and one weekly rest day within every 7-day period, some employees may suspend these rules.

Private and public companies that are suffering from a substantial work load pressure due to the pandemic—such as hospitals, 24-hour care facilities and the Danish Emergency Management Services (*beredskabet*)—may derogate from ordinary rest periods, if necessary, to ensure continuation of their activities.

Derogation can only be made to the extent necessary and only in companies with an extraordinary work load due to the COVID-19 pandemic. Employers are required—also in force majeure situations—to organise the work in such a way to ensure employees are not exposed to unnecessary health and safety risks.

Employees are entitled to take compensatory rest periods and days off at a later time. If, in exceptional circumstances, compensatory rest cannot be offered, the employees must be provided with other adequate forms of protection.

The derogation is temporary and expires on 10 May 2020.

A press release on this issue is available [here](#).

1.1.6 Initiatives aimed at reducing risk of infection from cross-border employees



In connection with the reopening of many workplaces, the government has introduced several initiatives that aim to reduce the risk of infection from cross-border employees. Some of the main points are:

- Employers carry the responsibility for a healthy work environment and that the necessary measures in connection with COVID-19 are being taken. Collaborations within different industries will be established to find individual sector solutions;
- The government intends to initiate a proactive test strategy, e.g. at the borders;
- A task force consisting of the social partners will work quickly to issue recommendations to enhance safety and the reduction of infection in certain industries;
- Last, if there are problems with securing a healthy work environment, the government is prepared to legislate and introduce a requirement of a 14 day self-isolation for all persons arriving in Denmark, irrespective of their nationality.

A press release on this issue is available [here](#).

1.2 Other legislative measures

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Estonia

Summary

Estonia has introduced measures to help employers and entrepreneurs deal with the negative impacts of the COVID-19 pandemic.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Temporary subsidy programme

Temporary subsidy programmes will guarantee payments of salaries in April and May. The subsidy has to date been paid to 6 243 employers, involving 37 864 employees in total. The amount of subsidies has reached EUR 33 130 515.

It is possible that the subsidy programme will continue beyond May and the conditions might be modified.

Temporary subsidies are paid to those employees whose employers have been significantly impacted by the current extraordinary circumstances. The subsidy provides an income for employees and helps employers address temporary difficulties without having to lay off staff or declare bankruptcy.

Principles for payment of the subsidy

The subsidy is paid if at least two of the following conditions apply to the employer:

- The employer must have suffered at least a 30 per cent decline in turnover or revenue for the month they apply for the subsidy compared to the same month in the previous year.
- The employer is not able to provide at least 30 per cent of its employees with work.
- The employer has cut the wages of at least 30 per cent of the employees by at least 30 per cent or is paying them minimum wage.

The employer must meet these conditions in the calendar month they apply for the subsidy. The employee must have an employment contract with the employer.

Both private and public sector organisations are eligible for the subsidies, independent of the size of the organisation.

Subsidies will be paid to employees whose employers are not able to provide them with work or whose wages have been reduced.

The amount of the subsidy will be 70 per cent of the employee's average monthly wage. The maximum amount of the subsidy is EUR 1 000. In addition, the employer must pay the employee a wage of at least EUR 150.

The employee and the employer will receive the minimum wage of at least EUR 584 from the Unemployment Insurance Fund. In case the employee has thus far received less than the minimum wage due to working part time, his/her income will remain the same as before.

Any employee's wage can be subsidised for up to two months over a three-month period.



The Unemployment Insurance Fund will pay social security contributions, unemployment insurance tax, mandatory pension payments, and income tax on the subsidy; the employer will pay the aforementioned taxes on the employee's wage.

The employer must apply for the temporary subsidy, but it will be paid directly to the employees.

Subsidies can be applied for the period between March to May 2020; the employer can apply for two months of an individual employee's wage to be subsidised during that period.

The employer shall send a separate application to the Unemployment Insurance Fund for each month after paying the employee's wages.

If the employer terminates the contract with the employee due to redundancy in the course of the same or the following calendar month during which the temporary subsidy was collected, the amount has to be returned to the Unemployment Insurance Fund.

Applying for the temporary subsidy

The application for the subsidy was available in *e-töötukassa* (e-Unemployment Insurance Fund) in April; the exact date and specifications will be provided as soon as possible.

To apply for the subsidy, the employer must submit an application to the Estonian Unemployment Insurance Fund for each calendar month separately. The conditions the employer must comply with may differ for different months, but two out of the three conditions must be met in any case.

Additional information is available [here](#).

1.1.2 Sickness benefits

The Estonian Health Insurance Fund pays benefits in case of temporary incapacity for work for days 1-3 of the temporary incapacity and from days 9 to 182. Days 4 to 8 are paid by the employer. Under normal circumstances, the employee is not entitled to any benefits for the first three days.

Additional information is available [here](#).

1.1.3 Financial support for entrepreneurs

The government envisages different measures to help entrepreneurs:

- a) State guarantee for new loans or to guarantee regular loan payments;
- b) Special measures for catering, accommodation and travel agencies have been introduced to secure the obligations of enterprises arising from loan and leasing contracts.

Additional information is available [here](#).

1.1.4 Specific measures for the culture and sport sector

The amount of the crisis package for the culture and sport sector is EUR 25 million. The package consists of two parts:

- a) Subsistence support for natural persons working in the culture and sport sector with a total amount of EUR 5.2 million. The terms of application and the qualifying criteria of the existing [Creative Persons and Artistic Associations Act](#) will be adjusted. The support scheme is provided for freelance artists (4.2



million), but also youth trainers at the professional levels 3 and 4 (400 000) and for mentors of dance groups and choirs participating in song and dance festivals (600 000);

- b) Partial compensation of the costs already incurred due to cancelled events or the cessation of activities of cultural and sport organisations; partial compensation for unavoidable fixed costs of the organisations that had to close their doors. The total amount of the scheme is EUR 19.8 million. The support will be allocated to museums (EUR 6 million), theatres (EUR 4 million), music (EUR 4 million), literature and publishing (EUR 500 000) and design (EUR 500 000). Festivals, foundations, collectives and sporting and physical activity events will be supported with EUR 2.6 million. EUR 600 000 will be made available to support visual arts and businesses in the audio-visual field (EUR 600 000) to help relaunch film production.

Additional information is available [here](#).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Finland

Summary

(I) A government bill on temporal amendments to the Unemployment Benefit Act concerning full-time entrepreneurs and other government bills concerning unemployment benefits during the coronavirus crisis.

(II) The Labour Court has issued rulings concerning a walkout and the interpretation of a collective agreement concerning travel costs.

(III) The enforcement of the Emergency Powers Act continues.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Temporary amendment of the Unemployment Benefit Act

The government has proposed ([Government Proposal HE 35/2020 vp, 02 April 2020](#)) a temporary amendment of the Unemployment Benefit Act (1290/2002). Full-time entrepreneurs would be granted the right to a labour market subsidy if their business deteriorates because of a widespread severe infectious disease. The amendment intends to support entrepreneurs during the COVID-19 pandemic.

The amendment would enter into force as soon as possible and would apply until 30 June 2020.

1.1.2 Other government proposals

The Finnish government proposes the continued enforcement of the Emergency Powers Act until 13 May 2020. According to the proposal, all measures reported in the previous Flash Report shall continue.

The government has also proposed several other temporary amendments to different acts concerning unemployment benefits and other social security benefits, related to the COVID-19 pandemic.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Travel costs and collective bargaining

Labour Court, No. TT 2020:33, 26 March 2020

The Court examined whether the collective agreement should be interpreted in such a way that the employer is required to pay the employee's travel costs when the employer's workplace changes. The court also assessed whether the employer should pay the employee a daily allowance for the period prior to changing the workplace, which was included in the employment contract. The plaintiffs were postal service workers. The Court **found** that the payment of such fees was not mandatory according to the collective agreement.



2.2 Unlawful strike

Labour Court, No. TT 2020:38, 15 April 2020

The local representative of the employees organised a walkout following the employer's decision to start cooperation negotiations. The Court found that the walkout had been organised during a time of industrial peace and targeted the employer's right to directly implement the effective collective agreement. The local representative and the labour union were **sentenced** to a compensatory fine due to their failure to execute their supervisory obligation.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

France

Summary

(I) The French government has adopted ordinances and decrees in response to the COVID-19 pandemic.

(II) In April, the Judicial Tribunal and the Court of Appeal have ruled on Amazon's failure to ensure the safety and health of its workers during the COVID-19 pandemic.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 General information

A state of public health emergency ("*Etat d'urgence sanitaire*") has been declared for a period of two months from the entry into force of [Emergency Law No. 2020-290 of 23 March 2020](#) published on 24 April (until 24 May 2020).

The declaration of a state of public health emergency empowers the Prime Minister to take "*general measures limiting the freedom of movement, freedom of enterprise and freedom of assembly and allowing the requisitioning of any goods and services necessary to fight the health disaster*".

Based on various decrees and ordinances pursuant to the Emergency Law, the French government has implemented several exceptional labour law measures with the aim of restricting the spread of the COVID-19 pandemic.

1.1.2 Legal basis of emergency response

To deal with the economic, financial and social consequences of the spread of the COVID-19 pandemic and the consequences of the measures taken to contain the spread, Article 11 of Law No. 2020-290 of 23 March 2020 (JO 24 March) authorises the government to issue, by ordinance, measures within three months from the publication of this law, that may come into force, if necessary, as of 12 March 2020.

Several ordinances have been implemented in April pursuant to Article 11 of Law No. 2020-290:

- Ordinance No. 2020-460 of 22 April 2020 (JO 23 April);
- Ordinance No. 2020-428 of 15 April 2020 (JO 16 April);
- Ordinance No. 2020-389 of 01 April 2020 (JO 2 April);
- Ordinance No. 2020-385 of 01 April 2020 (JO 2 April).

1.1.2.1 Ordinance of 22 April

[Ordinance No. 2020-460](#) of 22 April 2020 published on 23 April contains several provisions relating to the implementation of partial activity and the Social and Economic Council (CSE).

➤ Individualisation of partial activity

Ordinance No. 2020-460 of 22 April 2020 entitles employers to individualise partial activity within their company. The employer may "*order only part of the employees of*

the company, establishment, service or workshop, including those belonging to the same professional category to engage in partial activity or to apply a different distribution of hours worked and not worked to those employees, when such individualisation is necessary to ensure the continuity or recovery of the activity” on the basis of:

- a company or establishment collective agreement or, in the absence thereof, of a branch agreement;
- in the absence of an agreement, following approval by the Social and Economic Council (hereinafter: CSE).

The agreement or document submitted to the CSE for approval shall determine in particular:

- (1) the skills identified as necessary to maintain or resume the activity of the company, establishment, department or workshop;
- (2) objective criteria related to the positions/ functions occupied or professional qualifications and skills, justifying the designation of employees who are to be retained or to perform partial activity or who are subject to a different distribution of hours worked and hours not worked;
- (3) the procedures and periodicity, which may not be less than three months, to regularly review the abovementioned criteria to take changes in the volume and conditions of the undertaking’s activity into account to amend the agreement or document;
- (4) the specific arrangements for reconciling the respective employees’ professional, private and family life;
- (5) the procedures for informing the company's employees about the application of the agreement during its duration.

➤ **Protected employees**

The Ordinance of 22 April amends Article 6 of [Ordinance No. 2020-346 of 27 March 2020 \(JO 28 April\)](#) relating to partial activity, which provides that the agreement of protected employees is not required to place them in partial activity for the entire period of the state of public health emergency.

In other words, it is now provided that in order to impose partial activity on protected employees, it is necessary for the partial activity scheme to affect all employees of the company, establishment, department or workshop “to the same extent” to which the respective employee is assigned.

➤ **Reduced deadlines for consultation with the Social and Economic Council on decisions related to the health crisis**

Article 9 of the Ordinance provides that a decree of the Council of State (to be published) shall define the deadlines relating to:

- consultation and information of the CSE on the employer's decisions to deal with the economic, financial and social consequences of the COVID-19 pandemic;
- expert assessments carried out at the request of the CSE after it has been consulted or informed of such cases.

The scope of the decree is very broad and covers "*decisions taken by the employer intended to deal with the economic, financial and social consequences of the spread of the epidemic*", all consultations (and related expert opinions) to manage the health crisis (exemption from working hours, for example, or any other consultation relating to the general operation of the company or to health, safety or working conditions).

1.1.2.2 Ordinance 15 April

[Ordinance No. 2020-428](#) of 15 April 2020 complements the derogatory provisions for partial activity, apprenticeships, improves compensation for employees on sick leave and adapts the deadlines for the conclusion of collective agreements. The Decrees of 16 and 17 April clarify these new measures (see section 1.1.3 below).

➤ **Arrangements of the partial activity scheme for specific employees (Article 6)**

1. *Partial activity allowance for employees under apprenticeship or professionalisation contracts*

The Ordinance of 15 April 2020 specifies the provisions of [Ordinance No. 2020-346 of 27 March 2020 \(JO 28 April\)](#) on allowances for apprentices and workers under a professionalisation contract when they are placed in partial activity. The Ordinance distinguishes two cases:

- if their remuneration is lower than the minimum wage, they receive a partial hourly activity allowance, paid by their employer, of 70 per cent of the applicable minimum wage for these employees (as provided for by the Labour Code and, if applicable, by contractual provisions);
- if their remuneration is at least equal to the minimum wage, their hourly allowance for partial activity shall be set at:
 - 70 per cent of their previous gross hourly pay, calculated according to the rules for partial activity (i.e. pay rate used to calculate holiday pay), when the result of this calculation is greater than EUR 8.03;
 - EUR 8.03, where the result of this calculation is less than or equal to EUR 8.03.

2. *Exclusion of senior executives from partial activity in the event of closure of the company*

Senior executives, in accordance with [Article L. 3111-2 of the French Labour Code](#), may only be placed in partial activity if this results in a reduction in working hours below the legal duration in all or part of the establishment to which the executive is assigned. Senior executives are excluded when the partial activity results in the closure of the establishment.

In other words, senior executives may only benefit from the partial activity scheme in the event of a temporary closure of the establishment or part thereof. A decree is expected to specify the methods for calculating this allowance.

3. *Extension of the partial activity scheme to employees in umbrella companies (Portage salarial)*

The system of umbrella companies can be defined as a set of contractual relationships between a portage company called 'umbrella company', an independent contractor, and a client company. Two contracts are concluded within the system of umbrella companies. First, a service contract is concluded between the umbrella company and the client company, and secondly, a temporary employment agreement is concluded between the independent contractor and the umbrella company.

Employees under a permanent contract in such a system can be placed in partial activity during periods when no services are to be provided to a client company by way of derogation from the principle of [Article L. 1254-21 of the Labour Code](#) according to which these periods are usually unpaid.

4. *Extension of the partial activity scheme to employees under interim permanent contracts ("contrat à durée indéterminée intérimaire – CDII")*

The "*contrat à durée indéterminée intérimaire*", also called CDII, is a type of permanent contract (CDI). The interim permanent contract allows an employee to conclude a contract with a temporary work agency. The temporary worker can conclude assignments of up to 36 months as opposed to 18 months for a standard interim assignment. This contract includes two periods: assignments and breaks, during which the employee does not have a temporary assignment. However, he/she must be available for any assignment or training during this period.

The ordinance extends the benefit of the partial activity scheme to employees under such contracts.

According to the information provided by the Ministry of Labour, the employees will be able to benefit from this scheme during break periods.

➤ **Reduced deadlines for collective agreements (Article 8)**

1. *Reduced deadlines for company-level agreements*

The Ordinance reduces several deadlines for company collective agreements. This measure is applicable to collective agreements concluded up to 24 June 2020 (unless this date is modified), the sole purpose of which is to address "*the economic, financial and social consequences of the spread of the COVID-19 epidemic as well as the consequences of the measures taken to contain its spread.*"

The Ordinance reduces to eight days:

- the period of one month within which trade unions must indicate that they wish to consult employees in order to validate a company or establishment agreement ([Article L.2232-12 of the Labour Code](#));
- the period of one month within which the elected representatives of companies with at least 50 employees must indicate whether they wish to negotiate a company or establishment agreement ([Article L.2232-25-1 of the Labour Code](#)).

The Ordinance reduces to five days:

- the period of eight days from the date of the request for employee consultation, after which such consultation takes place if the signatures of other trade unions have not obtained 50 per cent of the votes cast in favour of representative organisations in the first round of the most recent elections of CSE members ([Article L.2232-12 of the Labour Code](#));
- the minimum period between the communication of the draft agreement to each employee and the consultation of the staff in Very Small Businesses ('TPE') without a trade union delegate and elected representative where a draft agreement is submitted to the employees ([Article L.2232-21 of the Labour Code](#)).

2. *Reduced deadlines for branch-level agreements*

The Ordinance of 15 April reduced to eight days the 15-day period for trade unions to reject the signing of a branch agreement or professional agreement ([Article L.2232-6 of the Labour Code](#)).

This reduction applies to agreements concluded as of 12 March 2020 and which have not yet been notified on the date of entry into force of this Ordinance and whose purpose is to address "*the economic, financial and social consequences of the spread of the COVID-19 epidemic and the consequences of containing that spread*".

[Decree No. 2020-441 of 17 April 2020](#) reduces other deadlines to accelerate the procedure for the extension of collective branch agreements:

- the deadline for obtaining opinions when an extension order is being considered has been reduced from 15 to 8 days ([Article D.2261-3 of the Labour Code](#));
 - the deadline for referring a matter to a group of experts from the date of publication of the extension notice has been extended from one month to eight days (Article D. 2261-4-3 of the Labour Code).
- **Extension of the maximum duration of daily allowance paid by social security**

Following the Emergency Law of 23 March 2020, which authorised the government to issue an ordinance to ensure the continuity of social security rights, the Ordinance of 15 April provides that daily allowances related to social security (*“indemnité journalière de sécurité sociale”*) paid in respect of sick leave beginning between 12 March and the date of the end of the state of public health emergency (currently 24 May) are excluded from the maximum number of daily allowances, which, in principle, is a maximum of 360 days over 3 consecutive years, or from the maximum period of the daily allowance for long-term illnesses (3 years).

➤ **Postponement of the payment of social security contributions (Article 4)**

Notes issued by URSSAF (organisation for the payment of social security and family benefit contributions) authorise the postponement of the payment of social security contributions.

[Ordinance No. 2020-312 of 25 March 2020](#) provides that the collection of contributions is suspended between 12 March and one month after the end of the state of public health emergency, i.e. until 24 June 2020, unless this deadline is extended.

The Ordinance of 15 April specifies several aspects:

- derogations relating to the collection of contributions are not applicable in the event of deliberate dissimulation or omission of the company's situation in order to benefit from the exceptional system of deferring contributions;
- the deadlines and deferrals granted to companies for the payment of contributions will not give rise to any increase or penalties;
- in the event of deferral of employee contributions, employers will no longer be required to deduct employee contributions from the remuneration of each pay period.

1.1.2.3 Ordinance of 01 April and Decree of 10 April

Article 11 of Law No. 2020-290 of 23 March 2020 on emergency measures taken to deal with the COVID-19 pandemic, authorises the French government to adjust by way of ordinance “the rules for informing and consulting staff representative bodies, in particular the social and economic committee, to enable them to deliver the required opinions within the deadlines and to suspend ongoing electoral processes of works councils”.

As a reminder, any substantial adjustment to employees’ working conditions is subject to prior consultation of the works council (Social and Economic Council – hereinafter: CSE).

By [Ordinance No. 2020-389](#), dated 01 April 2020 (JO 02 April), on emergency measures relating to staff representative bodies (“IRP”), the government has temporarily suspended the ongoing CSE election processes and authorises employers to hold meetings with their staff representatives using video conferences or conference calls, but also by instant messaging apps if the first two means cannot be used.

Furthermore, [Decree No. 2020-419](#) of 10 April 2020 on procedures for consulting employee representative bodies during the state of public health emergency published on 10 April 2020 provides clarifications on how to use conference calls and instant messaging in this regard.

➤ **Temporary suspension of the ongoing CSE election process**

Under the terms of the Ordinance, the CSE election initiated before 03 April 2020 has been suspended from 12 March 2020 to three months after the end of the state of public health emergency. The end of the state of public health emergency has been set for 23 May 2020 at midnight, and the ongoing electoral process is therefore suspended until 23 August 2020 (unless an extension of the state of public health emergency is ordered).

The duration of the current mandates and protection against dismissal of staff representatives and candidates shall be extended accordingly.

If an electoral process was carried out after 12 March 2020, it shall be suspended in accordance with the date of the latter formality.

The Ordinance provides that this suspension affects:

- (1) the timeframe for employers to organise elections (Articles [L. 2314-4](#), [L. 2314-5](#), [L. 2314-8](#) et [L. 2314-29](#) of the Labour Code);
- (2) the timeframe within which disputes relating to the elections must be submitted before the administrative authority and the judicial judge (Articles [R. 2313-1](#), [R. 2313-2](#), [R. 2313-4](#), [R. 2313-5](#) et [R. 2314-3](#) of the Labour Code);
- (3) the timeframe for the administrative authority to decide on these disputes (Articles [R. 2313-2](#), [R. 2313-5](#) et [R. 2314-3](#) of the Labour Code).

The Ordinance specifies that if the suspension occurs between the date of the first round and that of the second round, the regularity of the first round shall not be called into question.

In addition, the Ordinance also specifies that electorate and eligibility conditions shall be assessed on the date of each of the two rounds of voting. Thus, if due to the suspension or postponement of the ongoing CSE election, the second round shall take place several months after the first round, the electorate and eligibility conditions will have to be reviewed on that date.

➤ **Provisions relating to conference calls and instant messaging**

Article 6 of the Ordinance authorises, after the employer has informed the respective members:

- the use of videoconferencing for all meetings of the CSE and the Central Social and Economic Council;
- conference calls;
- instant messaging system, if the two previous means are not possible or if a company agreement allows it.

These rules shall apply to all meetings of staff representative bodies convened during the state of public health emergency.

Decree No. 2020-419 on procedures for consulting employee representative bodies during the state of public health emergency published on 10 April 2020 provides clarifications on how to use conference calls and instant messaging.

The Decree specifies, in particular, that when the meeting is conducted:

- as a conference call, the technical system implemented by the employer must guarantee the members' identification, as well as their effective participation by ensuring the continuous and simultaneous transmission of sound during the deliberations;
- through instant messaging, the technical system must guarantee the members' identification, as well as their effective participation by ensuring the instant communication of the messages written during the deliberations.

In addition, the Decree provides that meetings using instant messaging must be held in accordance with the following steps:

- (1) Deliberations shall be initiated only after verification that all members have access to the relevant technical device;
- (2) Deliberations shall be closed by a message from the employer, which may not be delivered before the deadline set for the closure of the deliberations;
- (3) The vote shall take place simultaneously. To this end, the members shall be entitled to the same duration for voting as from the opening of the voting operations indicated by the employer;
- (4) At the end of the period set for voting, the president shall disclose the results to all members.

1.1.2.4 Ordinance of 01 April

According to [Ordinance No. 2020-322 dated 25 March 2020](#), any sums paid under a profit-sharing agreement ("*participation*" or "*intéressement*") for the fiscal year 2019 can be paid until 31 December 2020 instead of 31 Mai 2020 for companies whose fiscal year ended on 31 December 2020.

[Ordinance No. 2020-385](#) of 01 April 2020 published on 02 April amended the rules on the exceptional bonus for purchasing power ("*Prime Macron*").

As a reminder, employers may award employees this exceptional bonus, which is exempt from income tax and social security contributions under certain conditions, pursuant to Article 7 of the [French Social Security Financing Law for 2020 No. 2019-1446](#) of 24 December 2019. To benefit from social and tax exemptions, the following conditions must apply :

- Employers must pay the bonus by 30 June 2020 at the latest;
- the bonus was subject to the existence of an optional profit-sharing agreement ("*accord d'intéressement*") in force within the company on the date of payment of this bonus.

The Ordinance amended several provisions provided for in the Social Security Financing Law for 2020.

➤ **Postponement of the bonus payment deadline**

The Ordinance of 01 April 2020 extends the deadline for **the** payment of **this** bonus from 30 June to 31 August 2020.

➤ **Condition of the optional profit-sharing agreement**

The payment of the exceptional bonus is no longer subject to the existence of an optional profit-sharing agreement.

➤ **Maximum amount of the bonus is exempt from income tax and social security contributions**

The maximum amount of the bonus exempt from income tax and social security contributions depends on whether the company is covered by an optional profit-sharing agreement:

- companies without an optional profit-sharing agreement may pay **a bonus that is exempt** up to a maximum of EUR 1 000 per employee;
- companies with an optional profit-sharing agreement may pay **a bonus that is exempt** up to EUR 2 000 per employee (instead of EUR 1 000).

➤ **Amount of the bonus**

The payment of the bonus can now be contingent upon the employee's working conditions during the COVID-19 pandemic.

➤ **Beneficiaries of the exceptional bonus**

In principle, the bonus could only be paid to employees and temporary workers present at the company on the date of the payment of the bonus.

The Ordinance now allows this bonus to be paid to employees and temporary workers present at the company on the date of conclusion of the collective company or group agreement, or on the date of the employer's unilateral decision.

1.1.3 Decree of 16 April

[Decree No. 2020-435](#) of 16 April 2020 (JO 17 April) specifies the methods for calculating the partial activity allowance for employees whose working hours are computed in days and specifies the base salary to be used for this calculation.

➤ **Employees subject to a fixed annual working time in days agreement**

According to the Decree of 16 April:

- a half-day not worked corresponds to 3h30 not worked;
- a day not worked corresponds to 7 hours not worked;
- a week not worked corresponds to 35 hours not worked.

During this period of partial activity, days of paid leave and rest taken, as well as public holidays not worked are converted into hours according to the above methods. The hours resulting from this conversion shall be deducted from the number of hours not worked for which the company requests a partial activity allowance.

➤ **Sales representatives ("Voyageurs, Représentants, Placiers –VRP")**

For sales representatives ("VRP"), the partial activity indemnity and allowance are calculated as follows:

- the reference monthly salary corresponds to the average gross salary received over the past 12 calendar months (or all of the calendar months previously worked if the employee has worked less than 12 months);
- the hourly amount is determined by referring the amount of the monthly reference pay to the legal working time;
- the loss of salary corresponds to the difference between the monthly reference salary and the monthly salary actually received during the same period;
- the number of unworked hours which may be compensated corresponds, within the limit of the legal working time, to the difference in remuneration obtained in relation to the hourly amount.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

2.1 Health protection at the workplace

Judicial Tribunal (TJ) Nanterre, emergency proceeding ("référé"), No. 20100503, 14 April 2020 and Court of Appeal of Versailles, No. 20/01993, 24 April 2020

The Sud Solidaires union claimed that Amazon France Logistique, which manages Amazon's distribution centres in France, endangered the health of its employees by not complying with the necessary COVID-19 protective measures.

Several alerts of serious and imminent danger were issued by employees who claimed that the measures taken by the company were insufficient. These alerts led to letters of formal notice from the labour inspectorate pointing out deficiencies at the site entrances, in the changing rooms or "during the handling of packages and with regard to the necessary social distancing.

In a decision **issued** on 14 April 2020, the Nanterre Court ordered Amazon France Logistique to limit, within 24 hours, its activity to essential goods such as hygiene, medical, food products, pending an assessment involving the staff representatives on the risks inherent in the COVID-19 epidemic on all its warehouses and the measures taken to protect employees provided for in Article L. 4121-1 of the French Labour Code.

As a reminder, Article L. 4121-1 of the Labour Code states that

"the employer shall take the necessary measures to ensure the safety and protect the physical and mental health of workers. These measures include 1° actions to prevent occupational risks, including those mentioned in Article L. 4161-1; 2° information and training activities; 3° the setting up of an organisation and appropriate means. The employer shall ensure that these measures are adapted to take into account the changing circumstances and aim at improving existing situations."

The Nanterre Court deemed that Amazon had failed to fulfil its obligation of safety and prevention:

"In the current period of the health emergency and given the highly contagious nature of the virus, while the epidemic continues to spread, the health services remain overburdened and each person is a potential vector of transmission of the virus, it is incumbent on the company, in order to ensure the health of its employees, to take additional measures to prevent or limit the consequences of this exposure to risks."

Amazon was given 24 hours after notification to comply with this order, which is subject to a penalty payment of **EUR 1** million per offence and per day of delay.

Amazon appealed the summary order of 14 April.

In a ruling handed down on Friday 24 April 2020, the Versailles Court of Appeal upheld the decision of the Nanterre court. It ruled that in all its warehouses, Amazon, which employs 6 600 employees and 3 600 temporary workers in France, must assess the occupational risks with the involvement of staff representatives.

Pending the implementation of these measures, Amazon was given two days to restrict the activity of its warehouses to the sole operations of receiving goods, preparing and shipping orders related to medical supplies, hygiene products and food items. The Court



of Appeal expanded the products Amazon is allowed to sell, adding electronics, office and pet supplies.

If the company does not comply with these measures by the end of the two days, Amazon will be subject to a penalty payment of EUR 100 000 "for each receipt, preparation and/or shipment of unauthorised products", a penalty payment reduced from the EUR 1 million per day of delay imposed in the first instance.

In response, Amazon has announced an extension of the temporary suspension of the activity of its French distribution centres.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Germany

Summary

- (I) The new Act on the Promotion of Continuing Vocational Training in Structural Change and the Further Development of Training Assistance contains i.a. provisions on the current coronavirus crisis. A new occupational health and safety standard focusses on the health of workers against risks posed by the coronavirus.
- (II) A number of draft bills contain plans for a COVID-19 working time ordinance, improved benefits in the area of short-time work and unemployment benefits, measures to remedy the situation of parents no longer able to meet the conditions to receive parental allowance, amendments to the Federal Personnel Representation Act.
- (III) Two important coronavirus-related judgments have been handed down by the courts. Doctors may continue to issue sick leave notes for patients with mild upper respiratory tract diseases or suspected COVID-19 for a period of up to seven calendar days, even after taking a medical history by telephone.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Promotion of continuing vocational training

On 23 April 2020, the German Bundestag passed the so-called Arbeit-von-morgen [Act](#) (Act on the Promotion of Continuing Vocational Training in Structural Change and the Further Development of Training Assistance). Among other things, the new law provides for the further improvement of continuing vocational training for employees in companies particularly affected by structural change.

However, the law also contains provisions on the current coronavirus crisis: the activities of works councils and other co-determination bodies during the coronavirus pandemic will be ensured by allowing meetings and resolutions to be held by video and telephone conference until the end of 2020. The same applies to conciliation bodies. Works meetings can also be held using audio-visual devices until the end of the year. The federal government will be authorised, in crisis situations with significant effects on employment across industries or regions, to extend the duration of the short-time work allowance for a limited period of up to 24 months without the entire labour market being affected. For recipients of short-time working allowance who, during the period of absence from work, take up a side job as mini-jobbers in system-relevant sectors, the income they earn from such work will no longer be credited in full against the short-time working allowance as of April. The regulations will come into force at intervals to give the Federal Employment Agency, which has been severely affected by the coronavirus crisis, the necessary lead time for implementation.

1.1.2 Working time ordinance

The Federal Ministry of Labour and Social Affairs (BMAS), in agreement with the Federal Ministry of Health (BMG), has submitted a draft bill for a COVID-19 working time ordinance. Exceptions to the Working Hours Act for certain occupations with regard to maximum working hours and rest periods will be possible, if this is necessary to keep communal services functioning in certain areas.

Since 28.03.2020, section 14(4) of the Working Hours [Act](#) (*Arbeitszeitgesetz*) provides that in the event of an epidemic situation of national significance, the BMAS may, without the consent of the Bundesrat, issue exceptions to working hours regulations for a limited period of time by statutory order. The prerequisite is that the activities to which the exceptions are to apply are necessary to maintain public safety and order, the health care system and nursing care, services of general interest or to provide the population with essential goods. On the basis of the regulation, longer working hours, shorter rest periods and the employment of workers on Sundays and public holidays for certain activities are permitted for a limited period. The draft regulation only covers certain activities that are listed exhaustively in the regulation. The special regulations are to apply until 31.07.2020, when the regulation is to automatically expire.

According to section 1(3) of the Ordinance, the affected occupational groups are:

a) the production and trade of goods for daily use; the production and trade of medical products (including, above all, those products that serve to fight the pandemic); b) medical treatment; c) emergency and rescue services; d) the maintenance of security and order; e) nursing care in in-patient and outpatient facilities; (f) energy and water supply and waste and sewage disposal; (g) agriculture; h) the transport of money and securities; (i) data infrastructure; and (j) activities in sales outlets described in the federal or land shop closing laws (e.g. petrol stations).

The draft in section 1(1)(2) and (4) of the Ordinance regulates deviations from the daily maximum working time. This can be extended to up to 12 hours a day—and possibly beyond that—if appropriate working time arrangements cannot be avoided by hiring staff or other personnel management measures. Furthermore, the weekly permissible working time may not be exceeded by more than 60 hours. In this respect, too, the restriction that excess is possible applies, provided the employer has taken appropriate organisational measures.

According to section 2 of the Ordinance, the rest period may be reduced by up to two hours within the scope of the activities mentioned. A minimum rest period of nine hours must, in principle, be observed. The compensation period is usually four weeks. If possible, the compensation should be provided as days off.

The ban on Sundays and public holidays has been relaxed for the activities listed in section 1 (3). Within eight weeks, a substitute day of rest shall be granted – by 31.07.2020, at the latest.

Otherwise, section 14 of the Working Hours Act shall remain unaffected.

1.1.3 Cushioning of social and economic consequences of the pandemic

On 29 April 2020, the Federal Cabinet adopted a [draft](#) law to further cushion the social and economic consequences of the coronavirus pandemic (Social Protection Package II). The Social Protection Package II intends to implement the measures the coalition government agreed to on 22 April 2020. In addition to improved benefits in the area of short-time work and unemployment benefits, it provides for a number of other regulations to cope with the COVID-19 crisis.

Improvements to short-time work benefits: for those who receive short-time working compensation for their working hours reduced by at least 50 per cent, the short-time working allowance is to be increased to 70 per cent (or 77 per cent for households with children) of the flat-rate net remuneration from the fourth month of receipt and to 80 per cent (or 87 per cent for households with children) of the flat rate net remuneration from the seventh month of receipt, at the latest until 31.12.2020. For employees who have been put on short-time work, existing additional income possibilities shall be made available for all occupations from 01.05. until 31.12.2020, with an additional income limit up to the full amount of the employee's previous monthly income.

An extension of the period of entitlement to unemployment benefits: due to the exceptional situation on the labour market, those who were already registered as job seekers before the crisis and receive unemployment benefits under the Social Code Book III currently have less chances of finding new employment. In addition, the placement and further training opportunities offered by the employment agencies are limited due to health protection measures. For this reason, unemployment benefits are to be extended by three months for those whose entitlement would end between 01.05.2020 and 31.12.2020.

Video conferences at labour and social courts: the possibility of using video conferencing for oral proceedings in labour and social courts is to be expanded. In addition, the requirements for the written procedure at the Federal Labour Court and the Federal Social Court are to be modified. This is intended to take even greater account of health protection measures in court hearings. The same is to apply to meetings of the Minimum Wage Commission, the homeworking committees as well as to negotiations of the collective bargaining committee in connection with declarations of the general applicability of collective agreements. In the future, it should also be possible to participate in these meetings by video or telephone conference in justified cases.

1.1.4 Parental allowance

Due to the coronavirus pandemic, an increasing number of parents are no longer able to meet the conditions for receiving parental allowance: for example, parents who work in essential professions cannot take planned parental leave. The Ministry of Family Affairs has drafted a [bill](#) to remedy this situation.

According to the draft law, parents who work in essential sectors and professions (e.g. doctors, police officers, nurses) should be able to postpone their parental allowance months. They will be able to take this period even after the 14th month of their child's life, if the current situation comes to an end by June 2021, the latest. The months of parental leave taken later do not reduce the amount of parental benefit for another child. Furthermore, the partnership bonus, which encourages parallel part-time work of parents, should not be cancelled or have to be repaid if parents work more or less than planned due to the COVID-19 pandemic. In addition, according to the draft law, during the period of receiving parental benefits, income replacement benefits that parents receive due to the COVID-19 pandemic should not reduce the amount of parental benefits. This includes, for example, short-time work benefits. To compensate for disadvantages in the later calculation of parental benefits, expectant parents can also exclude these months from the calculation of parental benefits.

1.1.5 Draft amendment to the Federal Personnel Representation Act

Against the background of the coronavirus pandemic, the coalition factions of the CDU/CSU and SPD have presented a draft [amendment](#) to the Federal Personnel Representation Act (Bundespersonalvertretungsgesetz, BT-Drs. 19/18696). According to this draft, the staff representation bodies currently in office are to continue their activity provisionally within the framework of a transitional mandate "if elections to the staff representation bodies do not take place by the end of the term of office of the existing staff representation bodies or if the constituent meeting of the newly elected staff representation bodies has not taken place by that time". Furthermore, according to the draft, resolutions of the staff committees may also be adopted without the physical presence of the members in meetings on site by enabling meetings to be held by means of video or telephone conference. According to the draft, both measures are to be limited in time until 31.03.2021.

1.1.6 Occupational safety

A new occupational health and safety [standard](#) focusses on the health of workers and the risks posed by the coronavirus. The occupational health and safety standard COVID19 formulates concrete requirements for occupational health and safety in times of the coronavirus crisis and aims to give people the necessary security to resume their work. The new standard includes the following elements:

Measures to maintain a safe distance: a safety distance of at least 1.5 metres should be universally maintained at work, both indoors and outdoors and in vehicles. Appropriate barriers, markings or access regulations should be implemented in the workplace. Where this is not possible, effective alternatives should be taken.

Changed procedures should reduce contacts: processes in companies should be organised in such a way that employees have as little direct contact with each other as possible. Shift changes, breaks or office presence should be equalised by suitable organisational measures, and contacts between employees should be reduced to a minimum within the framework of the shift plan.

Never come to work sick: persons with recognisable symptoms (including slight fever, signs of a cold, breathing difficulties) should leave the workplace or stay at home until any suspicion is cleared by a doctor. Employees are asked to check their health status before starting work to not endanger their colleagues.

Protective masks in case of unavoidable direct contact: where separation by protective screens is not possible, the employer should provide nose-mouth masks for the employees and all persons with access to the company premises (such as customers, service providers).

Take additional hygiene measures: the employer should also provide washing facilities or disinfectant dispensers to allow for frequent hand hygiene at the entrance/exit and near the workplaces. Short cleaning intervals for jointly used premises, company vehicles, work equipment and other contact surfaces should further improve protection against infection. Particular attention should be paid to the mandatory use of a "sneezing/coughing label" at work.

1.2 Other legislative development

Nothing to report.

2 Court Rulings

2.1 Use of camera recordings for distance monitoring

Labour Court Wesel, 2 BVGa 4/20, 24 April 2020

According to the Labour Court Wesel, the use of camera recordings for distance monitoring is subject to co-determination of the works council.

In the present [case](#), a company that belongs to an international group of companies, used images of its employees to monitor compliance with the safety distances of at least two metres recommended in the context of the coronavirus pandemic. For this purpose, it used the recordings made as part of the company's video surveillance system, which it anonymised by using software on servers located abroad.

The Labour Court partially granted the injunction claim submitted by the works council. In doing so, it assumed that the transfer of data abroad is contrary to the works agreement on the installation and use of surveillance cameras applicable in the company. In addition, the court based its decision on the fact that the works council's

co-determination rights under section 87 (1) Nos. 6 and 7 of the Works Constitution Act (Betriebsverfassungsgesetz) had been violated.

The relevant part of section 87 reads as follows [official translation]

"(1) The works council shall have a right of co-determination in the following matters in so far as they are not prescribed by legislation or collective agreement:

(..)

6. the introduction and use of technical devices designed to monitor the behaviour or performance of the employees;

7. arrangements for the prevention of accidents at work and occupational diseases and for the protection of health on the basis of legislation or safety regulations;"

2.2 Employing workers on Sundays and public holidays

Administrative Court Berlin, 4 L 132/20, 09 April 2020

The increased parcel volume as a result of the coronavirus crisis does not justify an exception to the legal ban on employing workers on Sundays and public holidays for parcel delivery staff. The Administrative Court of Berlin [ruled](#), in several summary decisions, that neither serious and unacceptable disadvantages exist for the companies nor a supply crisis exists that would justify a public interest.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

4.1 Facilitation of sickness notification

Doctors may continue to issue sick leave certificates for patients with mild upper respiratory tract diseases or suspected COVID-19 for a period of up to seven calendar days, even after taking a medical history by telephone. This is provided for in the [draft](#) of the "Work Incapacity Directive for the Adaptation and Extension of the Exceptional Provision for the Determination of Work Incapacity by Telephone", which the Federal Joint Committee (G-BA) published on 21.04.2020.

Greece

Summary

New measures to address the coronavirus crisis have been introduced in Greece.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

As the legislative measures adopted in March 2020 to address the coronavirus crisis expired at the end of April, a new legislative act for the next period was issued on 01 May 2020. A distinction between companies is once again made based on their situation during the crisis.

1.1.1 Suspension of employment contracts in companies whose operation has been prohibited

A) Extension of suspension of employment contracts

a. *Employment contracts of employees working for private sector companies whose operation continues to be prohibited in May 2020 by state decision, continue to be suspended for as long as the above suspension of operation is upheld.*

b. *Employees whose employment contracts have been suspended shall be entitled to financial support in proportion to the days of such extension.*

c. *By joint decision of the Ministers of Finance, Labour and Social Affairs and Health, the period of application of these measures may be extended until 30 June 2020.*

B) Temporary revocation of the suspension of employment contracts

a. To meet urgent needs, a temporary revocation of the suspension of employment contracts of employees is allowed in the case of companies whose operation has been prohibited by state decision. During the period of this revocation, the employee is entitled to remuneration in proportion to the days of employment.

b. Employers/companies, who make use of this temporary revocation, shall use a special form in the information system 'ERGANI' before the start of the employment.

c. After the expiration of the temporary revocation of the suspension of the employment contract, the suspension of the contract shall continue until the completion of the full period of time.

d. During the period of temporary revocation of the suspension of the employment contract in accordance with the present situation, the employer must pay the employees' salaries.

C) Organisation of working time

Companies, whose operation was prohibited by state decision, can adjust the working hours of their employees to their current operating hours. The above adjustment of working hours is carried out on the condition that the type of employment contract of these employees has not been modified.

1.1.2 Suspension of employment contracts in undertakings designated as 'severely affected'

A) New suspension

- a. Private sector companies designated as being 'severely affected' and having suspended the employment contracts of part or of all of their employees, pursuant to the provisions relating to the containment of COVID-19, may extend the suspension of up to 60 per cent of the contracts that have already been suspended, for a maximum period of thirty (30) days and in any case, not more than 31 May 2020. In case the above percentage is exceeded, the employer shall pay the salaries of employees whose number exceeds the above number.
- b. Employees, whose employment contracts have been suspended, shall be entitled to financial support in proportion to the days of such extension.
- c. Private sector companies, for as long as they make use of the measure of suspension of employment contracts and in any case, until 31 May 2020, shall not terminate the employment contracts of their employees. In this event, the dismissals are null and void.
- d. Private sector employers/companies, who make use of the measure of suspension of employment contracts, shall keep the same number of jobs and the same types of employment contracts for a period of forty five (45) days after the end of the new suspension period.

B) Revocation of suspension of employment contracts

- a. In the event of private sector companies designated as being "severely affected, having suspended the employment contracts of part or of all of their employees pursuant to the relevant provisions concerning the containment of COVID-19", if the above suspension has been maintained for a minimum of fifteen (15) days, they may proceed to revoke the suspension of employment contracts for at least 40 per cent of the employees whose contracts have been suspended.
- b. Contracts of employees whose suspension is revoked may not be suspended again.
- c. If the suspension of the employment contract has been revoked, the employees shall be entitled to financial support in proportion to the days of suspension.

C) Temporary revocation of the suspension of employment contracts

- a. To meet urgent needs, a temporary revocation of the suspension of employment contracts of employees of companies designated as being severely affected is allowed. During the period of this revocation, the employee is entitled to remuneration in proportion to the days of employment.
- b. Employers that make use of this temporary revocation shall use a special form in the information system 'ERGANI' before the start of the employment.
- c. After the expiration of the temporary revocation of the suspension of the employment contract, the suspension of the contract shall continue until the completion of the full period of time.
- d. During the period of temporary revocation of the suspension of the employment contract in accordance with the present situation, the employer is required to pay the employees' salaries.

D) Organisation of working time

Companies designated as being 'severely affected' may adjust the working hours of their employees to their operating hours. The above adjustment of the working hours is carried out on the condition that the employment contract of these employees has not been modified.



1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Hungary

Summary

(I) During the state of emergency, the provisions on the service time of law enforcement (police) officers are amended;

(II) During the state of emergency, the Labour Code must be applied with the modification that the employer may unilaterally order a reference period of maximum 24 months;

(III) The government will provide a subsidy for employees put on short-time work (*Kurzarbeit*).

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Derogations from working time regulations for special groups

The scope of [Act 42 of 2015 on service relationships of professional law enforcement \(police\) officers](#) (Hszt.) covers police, anti-terrorist, migration, prison officers, Parliament guards, civil secret service, tax and customs officers. Government Decree 85/2020 (IV.5.) of 06 April contains provisions on their working time, which derogate from the provisions of Hszt. During the state of emergency:

- As a derogation from Article 139(2) of Hszt., the combined weekly service time and overtime, in the interests of the service, may exceed the maximum weekly working time of 48 hours laid down in Article 6 (b) of the Working Time Directive;
- As a derogation from Article 135(1) of Hszt., the daily service time may exceed 12 hours on working days, but may not exceed 24 hours (Government Decree 85/2020, Article 1(2));
- As a derogation from Article 135(3) of Hszt., the daily service time that can be spent performing highly dangerous activities in the service position may exceed the six-hour maximum by three hours (Government Decree 85/2020, Article 1(3));
- As a derogation from Article 135(6) of Hszt., the supervisor of the respective service shall share the service schedule with the service provider seven days prior to the commencement of the service (Government Decree 85/2020, Article 1(4));
- As a derogation from Article 136(3) of Hszt., a period of at least eight hours of continuous rest per day shall now include travel from home to the place of service and the return home. In this case, the period without travel may not be less than six hours (Government Decree 85/2020, Article 1(5)).

1.1.2 Other derogations from labour law

Government Decree 104/2020 on immediate measures to mitigate the impact of the coronavirus pandemic on the national economy and Government Decree 47/2020 (III. 18.) on supplements to the labour law rules within the framework of the Economic Protection Action Plan of 10 April, effective since 11 April, contains the following provisions:

- Beyond Article 6(2) of Government Decree 47/2020, the Labour Code shall continue to apply with the modification that the employer may unilaterally order a reference period of maximum 24 months (Government Decree 104/2020, Article 1(1));
- The employer may extend the formerly ordered reference period up to the length indicated in paragraph 1 (24 months) (Government Decree 104/2020, Article 1(2));
- It is prohibited to derogate from Articles 99 and 104-106 of the Labour Code, however, this does not affect derogations under 135(4) (Government Decree 104/2020, Article 1(3));
- Provisions of collective agreements contradicting the provisions in this Decree shall not be applied during the applicability of this Decree (Government Decree 104/2020, Article 1(4));
- The temporal scope of working time reference periods under Articles 1(1) and 1(2) of this Decree, and reference periods deriving from agreements of the parties under Article 6(4) of Decree No. 47/2020, will not be affected by the cessation of the state of emergency (Articles 2 and 3 of Decree 104/2020 are not relevant).

1.1.3 Support for reduced working hours

According to Government Decree 105/2020 of 10 April, effective since 16 April, provides for government support (from 16 April) for employees put on short-time work for the next three months. The support is the Hungarian version of *Kurzarbeit*. The rules for this government subsidy have been amended considerably by Government Decree 141/2020 of 21 April. Decree 141/2020 entered into force on 29 April and amended the original government decree on several points. The main reason for this fundamental amendment was that the conditions for the subsidy in the first decree were too strict and restrictive. Its amendment eased many of the conditions.

Conditions for the reduced working time subsidy:

Employee:

- does not receive any other support for part-time employment;
- has been employed by the employer at least from the date of the declaration of the state of emergency; and
- has not been given notice.

Employer:

- has been in operation for at least six months;
- not using overtime.

Period:

- The grant can be awarded for the period following the submission of the application;
- The maximum duration of the support is three months.

Subsidy:

- The reduced working time must be part-time work that amounts to at least 25 per cent of the working time stipulated in the employment contract, but does not exceed 85 per cent;

- Based on the monthly net base wage;
- The maximum amount is the proportionate part of twice the minimum wage;
- Paid in arrears on a monthly basis;
- Exempt from tax and social security contributions;
- The employer is required to employ 'supported employees' during the period of support, but this obligation does not apply to all employees;
- Support also covers teleworkers, home office workers and temporary agency workers;
- On the day of the decision, the employment contract is automatically amended for the duration of the subsidy in terms of reduced working hours and individual development time, as set out in the application;
- This employment must serve the 'national economic interest' (which is not defined by the Decree, and the Regional Government Office shall assess this);
- There is no remedy against the decision of the Regional Government Office.

Due to the condition of the 'national economic interest', this is not a (fully) normative subsidy, and there is no remedy against the decision of the Regional Government Office.

The decision of the Regional Government Office to automatically amend the employment contract (!) for the duration of the subsidy in accordance with the reduced working hours and the individual development time, as set out in the joint application of the employer and the employee, must be emphasised.

1.1.4 Unilateral reduction of football players' pay up to 70 per cent

During the state of emergency, all football clubs may unilaterally decrease the pay (monthly service fee) of all professional football players working in

- an employment relationship, or
- under a service contract

by up to 70 per cent of their salary according to Article 2(1) of Government Decree 142/2020 (IV.22.) on certain labour law regulations during the state of emergency of 22 April, effective since 07 May.

1.2 Other legislative development

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Iceland

Summary

Modifications to the part-time unemployment benefits system have been announced. The state will pay part of the notice for employees who have been laid off.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Modifications to the part-time unemployment benefits system were announced by the government at the end of April. The scheme will remain unchanged until the end of June, after which the employee must be paid 50 per cent of his/her salary by his/her employer. The scheme is planned to cease by the end of August.

In addition, the government plans to help employers, who have seen a 75 per cent drop or more in income and envisage a similar decrease until the end of the year, can apply for employees' notices to be partly paid by the state, albeit not more than ISK 633 000 a month in addition to holiday pay, and only up to 85 per cent of an employee's salary. However, neither changes have been presented as a bill to Parliament.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Ireland

Summary

- (I) The three Income Support Schemes introduced in March, continue to apply and have been partly extended, and further amendments are being discussed.
- (II) The government, social partners and the Health and Safety Authority are expected to develop a national safety protocol for workplaces.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Phased lifting of restrictions

The restrictions on social and economic life originally imposed in March (detailed in the previous Flash Report and scheduled to expire on 05 May) have now been extended to 18 May, on which date the government proposes the start of a phased lifting of those restrictions, provided the progress in containing the virus continues. Remote working will remain in place for most businesses, but the first phase would see outdoor workers in construction returning to work, together with the reopening of garden centres and DIY stores. This will be followed by a three-phase reopening of non-essential retail outlets over June and July. The fifth and final phase will see a phased return to normal work starting 10 August. The [Roadmap for Reopening Society and Business](#) will be kept under review and may be accelerated if the spread of the virus is halted earlier than expected; equally, it may be paused if public health officials believe the virus is not being sufficiently contained. If at any stage a 'second wave' of the virus were to appear, the original restrictions would be re-imposed.

1.1.2 Income Support Schemes

The three Income Support Schemes introduced in March continue to operate. As of 27 April, 36 100 workers, 57 per cent of whom are female, have been medically certified for receipt of the COVID-19 enhanced Illness Benefit of EUR 350 per week. Twenty-two per cent of these workers are employed in the wholesale and retail trade, 21 per cent in human health and social work activities and 13 per cent in manufacturing. As of the same date, 591 000 workers, 57 per cent of whom are male, are in receipt of the COVID-19 Pandemic Employment Payment (hereinafter: PUP) of EUR 350 per week; 21 000 of whom were receiving it for the first time. Twenty-one per cent of workers in receipt of the payment were employed in the accommodation and food service sector, 15 per cent in the wholesale and retail trade and 13 per cent in construction. More information is available [here](#).

The COVID-19 Temporary Wage Subsidy Scheme (hereinafter: TWSS) is available to employers who keep employees on payroll through the pandemic, thus avoiding layoffs and/or redundancies. When first introduced, the scheme provided for a 70 per cent subsidy but, given the nature of the scheme, many part-time and low-paid staff were financially better off receiving the PUP. Consequently, on 15 April, the government [announced](#) that the subsidy would be increased to 85 per cent for workers whose average net weekly pay does not exceed EUR 412. For workers whose average net weekly pay was between EUR 412 and EUR 500, the subsidy will be paid at EUR 350 a week. For workers whose previous net weekly pay was between EUR 500 and EUR 586, the subsidy is capped at 70 per cent up to a maximum of EUR 410. For workers with previous net weekly pay of more than EUR 586, the subsidy will be applied on a tiered basis. Previously, those whose net weekly pay was more than EUR 960 were excluded from the scheme. That has now changed for those whose salary has fallen below that

level. The amount they will receive will depend on how much of a pay cut the worker has suffered and will be capped at EUR 350 a week.

TWSS is operated by the Revenue Commissioners through the payroll system and is scheduled to last until 18 June. As of 30 April, 50 900 employers, employing 427 000 workers, had registered with Revenue, 82 per cent of whom employ less than 20 workers. The cumulative value of payments made under the scheme is now EUR 712 million. By the end of April, 21 500 workers had moved from TWSS to the PUP, but at the same time, 25 000 workers had moved from the PUP to TWSS. This suggests some employers are rehiring workers whom they had previously been forced to lay off. More information is available [here](#).

In a [letter](#) to the Minister for Finance from the National Women's Council of Ireland, the Irish Congress of Trade Unions and the SIPTU trade union, a further anomaly in TWSS was identified. The Minister's attention was drawn to the fact that women returning from maternity leave are excluded from the scheme because they were in receipt of maternity benefits in the first two months of 2020. The TWSS subsidy reference period is calculated according to earnings of eligible employees for January and February. The Minister was asked to resolve this issue as soon as possible, so that women returning to work have their jobs and income protected.

1.1.3 Health and safety

On 9 May, the Government published the [Return to Work Safely Protocol](#) which sets out the range of measures employers and their workers will have to undertake in order to reopen over the coming weeks. Workplaces will have to appoint at least one worker representative who will work with the employer to ensure that the measures set out in the protocol are being strictly complied with. Handshakes are banned, temperature testing will be carried out and workers will not be allowed to share pens or bottles. The Health and Safety Authority will oversee compliance with the Protocol and will be able to shut down workplaces which do not adhere to the new measures.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to Report.

3 Implications of CJEU Rulings

Nothing to Report.

4 Other Relevant Information

A [working paper](#) prepared by the Department of Employment Affairs and Social Protection and the Central Bank of Ireland shows that young people and women are bearing the brunt of the measures taken to tackle the threats posed by the COVID-19 pandemic.

Discussions continue between the government and the social partners, in conjunction with the Health and Safety Authority, in developing the health and safety standards to apply in workplaces.

Italy

Summary

(I) The government's measures to contain the spread of COVID-19 initially only affected some areas of the country (i.e. "red zones"), and subsequently were extended to a wider area, and since 11 March, they have applied to the national territory as a whole. A total lockdown was declared on 11 April and repealed on 4 May.

(II) New laws entitle employees to a tax reduction of up to EUR 100 per month. Employers can apply for subsidies using a simplified procedure.

(III) A tripartite Shared Protocol defines adequate levels of protection for workers as a precondition for engaging in productive activities.

(IV) New rules on the special recruitment for health professions have been enacted.

1 National Legislation

1.1 Measures against the spread of COVID-19

In April, the Italian government has continued to adopt measures to contain the spread of COVID-19 and to limit its impact on the economy. For this purpose, the restrictions adopted to contain the virus were extended first until 13 April and then until 3 May 2020. On 10 April, a total lockdown was ordered. A partial reopening of production activities started on 4 May.

1.1.1 Decree of 1 April

The Decree of the President of the Council of Ministers, 1 April 2020, extends all measures to contain the epidemic adopted by Decrees of 8, 9 and 22 March to 13 April. The Decree also suspends the training of all athletes in all sports facilities. The Decree of 9 March, in fact, had suspended sports competitions, but allowed the use of facilities for training.

1.1.2 Act of 2 April

Act of 2 April 2020, No. 21 converts the Law Decree of 5 February 2020 No. 3 on urgent measures to reduce the tax burden on employees into law. The Decree provides that from 1 July 2020, employees will be entitled to a tax reduction of up to EUR 100 per month. The amount of this bonus decreases as income increases.

This is the only piece of labour-related legislation approved in April by the Italian Parliament that is not related to the COVID-19 crisis.

1.1.3 Decree of 8 April

Law Decree 8 of April 2020 No. 23 extends the application of Art. 19-22 Law Decree of 17 March 2020 No. 18 to employees hired between 24 February 2020 and 17 March 2020. These articles provide that employers can apply for the ordinary *Cassa Integrazione* using a simplified procedure without paying the additional contribution; if they already benefit from extraordinary integration, they can transform it into an ordinary one. Regions can authorise a special *Cassa Integrazione* for employers to which the ordinary one does not apply.

1.1.4 Decree of 10 April

The Decree of the President of the Council of Ministers, 10 April 2020 extends all measures previously adopted to contain the epidemic to 3 May. Moreover, it provides that all industrial and commercial activities are to be suspended throughout the national territory until 3 May. Only the activities expressly listed by the Decree are permitted, because they refer to essential services (i.e. agro-food, medical, pharmaceutical, defence, etc.).

The suspended activities can, however, continue if they are organised using smart working.

Any activity that contributes to with the management of the epidemiological emergency is allowed.

1.1.5 Shared Protocol of 24 April

According to the Shared Protocol regulating measures to contain the spread of COVID-19 in the workplace, 24 April 2020, signed by trade unions, employers' organisations and the government, productive activities can only be performed if adequate levels of protection are guaranteed for the workers.

To counteract the spread of the virus, companies can use smart working and social security benefits for temporary layoffs. They can also adopt extraordinary organisational solutions, like restrictions to workers' presence at the workplace.

Each company must inform all workers and anyone who enters the company about the provisions issued by the authorities, delivering and/or posting special information brochures at the entrance and in the most visible places of the company.

The body temperature of all persons entering the company premises must be measured. If it is equal to or higher than 37.5 °C, access to the premises must be denied. No one who in the last 14 days has been in contact with someone tested positive for COVID-19 or lives in a risk zone as defined by the WHO, can access the company premises. Workers who tested positive for COVID-19 can only resume work after presenting a medical certification attesting complete recovery. These rules also apply to the access of third parties to the premises, such as cleaning staff.

The access of external suppliers must be regulated by special rules and is allowed if they use dedicated routes (for example, truck drivers must remain in their vehicles).

Undertakings shall ensure daily cleaning and periodic sanitisation of the premises, workstations and common areas.

In the geographic areas with the greatest spread of the epidemic and in companies with suspected cases of COVID-19, extraordinary sanitisation must be carried out in addition to normal cleaning activities.

Undertakings must make hand cleaners available to workers through dispensers located in easily identifiable points. The cleaning liquid can also be produced in the company itself in accordance with WHO specifications.

Undertakings must provide workers with suitable individual protection tools, taking specific risks into account and the possibility of ensuring adequate distance between workers.

Access to common spaces, including company canteens, smoking areas and cloakrooms are contingent on certain standards, such as continuous ventilation of the rooms, limited stays in those rooms and keeping a safety distance of at least 1 metre between people.

All national and international business trips must be suspended, departments not strictly necessary for production must be closed, using smart working where possible. The distribution of workers in the company's premises must be organised in such a way as to facilitate distancing, making rooms normally used for other purposes available, such as meeting rooms.

The use of private transport means to travel to work is encouraged.

Access and exits from the premises must be spread out. Movement within the premises must be limited. Face-to-face meetings are prohibited.

Anyone in the premises who has symptoms including fever or a respiratory infection must immediately report to the HR office, which will place him/her in isolation, and inform the health authorities immediately.

1.1.6 Act of 24 April

Act of 24 April 2020 n. 27 converts into law the Law Decree of 17 March 2020 No. 18, with some modifications and adaptations.

Act No. 27/2020 repeals the Decree of 2 March 2020, No. 9 (on the extension of the "red zone" to a large area of northern Italy), 8 March 2020 No. 11 (on the activity of judicial offices during the COVID emergency), 9 March 2020 No. 14 (on the special recruitment for health professions). However, it confirms the validity of measures adopted based on the repealed decrees.

Act No. 27/2020 revises the rules on special recruitment for health professions. Self-employment contracts or collaboration contracts can be stipulated not only with doctors in training in their last and penultimate year of specialisation in accordance with the Law Decree of 9 March 2020, but also with specialised or retired doctors. These contracts can be entered into until the end of the emergency and may be extended until 31 December 2020.

Act No. 27/2020 modifies the rules established by the Law Decree of 17 March 2020 No. 18 about *Cassa Integrazione*.

Ordinary *Cassa Integrazione* does not require consultation with trade unions, not even electronically. Ordinary *Cassa Integrazione* can be extended for an additional 3 months for companies located in the first "red zone" (as defined by DPCM 1 March 2020) and for employers employing people who reside in that area. Lombardy, Veneto and Emilia Romagna can provide for special layoff in derogation of the law for an additional 4 weeks for the same companies and employers.

Companies applying the *Cassa Integrazione* due to the COVID emergency can extend or renew fixed-term employment contracts and temporary contracts in derogation of Art. 20 and 32 Legislative Decree 81/2015. Fixed-term contracts can be renewed without respecting the 10 or 20-day interruption between contracts provided in Art. 21 Legislative Decree 81/2015.

The Act clarifies that individual and collective dismissals are suspended for 60 days from 17 March 2020. The ban on dismissals does not apply in case of termination of the activity.

1.1.7 2Decree of 26 April

The Decree of the President of the Council of Ministers, 26 April 2020, extends all measures previously adopted to contain the epidemic as well as the list of allowed economic activities.



From 4 May, industrial companies and wholesale trade may reopen. Catering activities, such as restaurants, bars, etc., will not only engage in home deliveries but also take away. Retail stores that do not provide basics shall remain closed, such as barber shops, hairdressers, beauty centres. At universities, exams can take place face to face and the use of laboratories and libraries will be allowed, only if the organisation of spaces and work allow for social distancing and if all necessary protection and prevention measures have been adopted.

The Decree of 26 April confirms the closure of sports facilities, but allows for training by athletes, professionals and amateurs, who practice individual sports, if they are recognised as representing the national interest by the Italian National Olympic Committee (CONI) and by their respective federations, in view of their participation in the Olympic Games or in national and international events.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Latvia

Summary

The unemployment rate is growing rapidly. The government and Parliament have adopted social support measures for unemployed and employee downtime.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Posting of workers

One measure to ease the rate of unemployment is the possibility of posting workers abroad and vice versa, the possibility to host posted workers in Latvia. On 02 April 2020, the government adopted [amendments to Government Order No. 102 implementing the state of emergency](#) (Grozījumi Ministru kabineta 2020. gada 12. marta rīkojumā Nr. 103 "Par ārkārtējās situācijas izsludināšanu"), Official Gazette No. 66B, 02 April 2020), which determines that the Investment and Development Agency is responsible for the provision of support and the coordination of undertakings with regard to returning posted Latvian workers back home, the transportation of workers from Latvia to be posted abroad and the transportation of foreign workers posted in Latvia. Based on private knowledge of the author, for Latvian workers presently being posted to Sweden, for example, a ferry route between Riga and Stockholm has been reopened by special order of the Minister of Transportation.

1.1.2 Social support measures

The government and Parliament has allocated around EUR 4 billion to address the economic challenges of COVID-19. Among them is a measure referred to as 'downtime allowance' in the amount of 75 per cent of the employee's or self-employed person's previous pay, but may not exceed EUR 700 monthly.

Downtime allowance is not provided to the employees as such, but to employers to support their business. To be eligible for 'downtime allowance' for employees, employers (companies) must comply with certain criteria. The initial criteria set out by the [Cabinet of Ministers Regulation No. 165](#) adopted on 26 March 2020 (*Noteikumi par Covid-19 izraisītās krīzes skartiem darba devējiem, kuri kvalificējas dīkstāves pabalstam un nokavēto nodokļu maksājumu samaksas sadalei termiņos vai atlikšanai uz laiku līdz trim gadiem*), Official Gazette No.62B, 27 March 2020) were obviously too restrictive. Consequently, only 3.2 per cent of undertakings that had applied to this allowance qualified for it. The government responded accordingly, and adopted two amendments to Regulation No. 165, easing the qualification criteria on 02 and 09 April 2020 (The [Cabinet of Ministers Regulation No. 184](#), Official Gazette No. 67A and the [Cabinet of Ministers Regulation No. 205](#), Official Gazette No. 71D). Finally, on 23 April, the government adopted an entirely new [Regulation No. 236](#) ('Regulation on downtime allowance for employed and self-employed persons who have been affected by the spread of Covid-19' - *Noteikumi par dīkstāves palīdzības pabalstu darba ņēmējiem un pašnodarbinātajām personām, kuras skārusi Covid-19 izplatība*, Official Gazette No. 83A, 29 April 2020).

The 'downtime allowance' is also available to self-employed persons. The initial criteria defined by the Cabinet of Ministers in Regulation No. 179 adopted on 31 March 2020 were too restrictive, leading to the adoption of a new [Cabinet of Ministers Regulation No. 236](#) on 23 April 2020 ('Regulation on downtime allowance for employed and self-employed persons who have been affected by the spread of Covid-19' - *Noteikumi par*

dīkstāves palīdzības pabalstu darba ņēmējiem un pašnodarbinātajām personām, kuras skārusi Covid-19 izplatība, Official Gazette No. 83A, 29 April 2020), providing less restrictive criteria entitling a bigger circle of self-employed persons to 'downtime allowance'.

Data provided by the State Revenue Office, the institution currently responsible for granting 'downtime allowances', highlights overall problems on the employment market, particularly the fair share of the 'grey economy', which uses 'envelope' salaries or salaries which are only partially declared officially. It follows that the average amount of 'downtime allowance' awarded so far is only EUR 268 – below the statutory monthly salary, which is EUR 430.

Of the recipients of 'downtime allowance', 35 per cent are employed in the hospitality and catering sector, 13 per cent in whole sale, retail, vehicle repair, 11 per cent in the arts and entertainment sector.

Parliament also adopted the [amendment to the Law on Unemployment Insurance](#) (*Likums "Par apdrošināšanu bezdarba gadījumam"*, Official Gazette No. 80B, 25 April 2020), providing that persons whose entitlement to unemployment allowance ends during the crisis period are entitled to a flat-rate unemployment benefit of EUR 180 until 31 December 2020.

The entitlement to social insurance parental allowance was extended until the end of the state of emergency by [amendments to the Law on Sickness and Maternity Insurance](#) (*Grozījums likums "Par maternitātes un slimības apdrošināšanu"*, Official Gazette No. 67B, 03 April 2020). In case the child turns 12 months (or 18 months), the period until which a parent is entitled to social insurance parental allowance, the parent retains the right to this allowance until the end of the state of emergency.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

3.1 Transfer of undertaking

CJEU case C-344/18, 26 March 2020, ISS Facility Services

The decision of the CJEU has no direct implications for Latvian labour law, however, it affects the interpretation of the concepts implemented in Latvian law of Directive 2001/23/EC. There have been no similar cases before the Latvian courts on the possibility to 'divide' a full-time employment contract into two or more part-time employment contracts with several transferees.

The concepts, definitions and criteria relevant for establishing the applicability of the protection provided by Directive 2001/23/EC are implemented in Latvian law (the Labour Law) in a very generalised manner without the provision of more extensive wording as follows from the interpretation of respective concepts, definitions and criteria provided by the case law of the CJEU. Such national implementing measures are most likely not very effective for the enforcement of the rights under Directive 2001/23/EC, since only few cases so far have been brought before the national courts.



4 Other Relevant Information

In the last quarter of 2019, the level of unemployment was 6 per cent (close to the highest point of economic activity in 2007 before the economic crisis of 2008; see also [Special Economic Area of Latgale, Unemployment rate rapidly approaches rates of 2007 - Bezdarba rādītāji strauji pietuvojas 2007. gada līmenim](#), 25 February 2020); in the middle of April 2020, the unemployment rate was already at 7.5 per cent (68 264 persons). In other words, the number of officially registered unemployed persons has increased by 10 000 since the beginning of the COVID-19 crisis. According to the State Social Security Agency, in 2019, the monthly average number of applications for unemployment benefits was 6 600, while at present, during the first half of April 2020, the total number of submitted applications was 10 000, with daily applications at around 800. The average amount of unemployment benefits awarded in March was EUR 503.

Among those who have lost their jobs are employees of all qualification and skill levels from various sectors.

Collective redundancies have been registered with the State Employment Agency from the most affected sectors, including the passenger transport sector (35 per cent of announced collective redundancies) and the arts and entertainment sector (24 per cent) (see also the [article](#) of a Latvian public broadcasting service of 17 April 2020).

Liechtenstein

Summary

The measures reported in the March Flash Report have been supplemented and in some cases modified in accordance with the developments and implementation of protection plans; particularly vulnerable persons should not be engaged in child care activities; hygiene and social distancing measures have been enhanced; the obligations of the employer concerning health protection with regard to particularly vulnerable workers are specified; unemployment benefits and compensation for short-time work are being provided.

1 National Legislation

1.1 Measures to fight COVID-19

The March Flash Report reported a number of measures taken by the Government of Liechtenstein to fight the coronavirus (COVID-19). These include measures that directly affect labour law. During the reporting period, these measures were supplemented and in some cases modified. Some are mentioned here:

1.1.1 Development and implementation of protection plans

For approved facilities and events, the development and implementation of a protection plan must ensure that the transmission risk is minimised for customers, visitors, participants and workers.

Wherever possible, industry or professional associations shall develop industry-related basic protection plans. To this end, they shall consult the social partners.

The competent enforcement bodies shall close institutions or ban events if there is no adequate protection plan or if the latter is not being observed.

Art. 5a(1), (3), and (5) of the [Ordinance](#) on measures to fight the coronavirus (COVID-19) (Verordnung über Massnahmen zur Bekämpfung des Coronavirus, Covid-19, LR 818.101.24).

1.1.2 Education and child care facilities

Particularly vulnerable persons should not be engaged in child care activities.

Art. 5b(4) of the [Ordinance](#) on measures to fight the coronavirus (COVID-19) (Verordnung über Massnahmen zur Bekämpfung des Coronavirus, Covid-19, LR 818.101.24).

1.1.3 Hygiene and social distancing

Particularly vulnerable persons shall stay at home and avoid crowds. If they leave the house, special arrangements apply and the recommendations of the government and the Office of Public Health on hygiene and social distancing must be complied with.

Art. 7b(1) of the [Ordinance](#) on measures to fight the coronavirus (COVID-19) (Verordnung über Massnahmen zur Bekämpfung des Coronavirus, Covid-19, LR 818.101.24).

1.1.4 Obligations of the employer concerning health protection with regard to particularly vulnerable workers

The employer shall allow particularly vulnerable workers to perform work from home. To this end, the employer shall take the appropriate organisational and technical measures to make this possible.

If it is not possible for a vulnerable employee to perform his/her regular work obligations from home, the employer shall, in derogation from the employment contract, assign equivalent substitute work to the respective worker, which can be performed from home, and for which the same amount of remuneration is paid. To this end, the employer shall take the appropriate organisational and technical measures.

If, for operational reasons, the presence of particularly vulnerable workers on site is fully or partly indispensable, they may be employed on site in their regular occupation if the following conditions are met:

- the workplace is designed in such a way as to preclude any close contact with other persons, in particular by providing a single room or a clearly delimited working area, taking into account the minimum distance of two metres;
- in cases where close contact cannot be avoided at all times, appropriate protective measures shall be taken according to the STOP principle (substitution, technical measures, organisational measures, personal protective equipment).

If it is not possible to employ the respective workers in this manner, the employer shall, in derogation from the employment contract, assign equivalent substitute work on site to such workers, whereby the requirements are met, and for which the same amount of remuneration is paid.

Before introducing these measures, the employer shall consult the worker(s) concerned.

The worker(s) concerned may reject the work assigned to them if the employer does not meet the above-mentioned conditions or if the worker considers the risk of infection with the coronavirus to be too high for special reasons, despite the measures taken by the employer. The latter may require a medical certificate.

If it is not possible to employ vulnerable workers in accordance with the above-mentioned provisions, or if the workers concerned justifiably reject the work assigned to them, the employer shall release them from work while continuing to pay their wages.

The workers shall submit claims of their particular vulnerability by means of a personal declaration. The employer may request a medical certificate.

Art. 7c(1)–(8) of the [Ordinance](#) on measures to fight the coronavirus (COVID-19) (Verordnung über Massnahmen zur Bekämpfung des Coronavirus, Covid-19, LR 818.101.24).

1.1.5 Unemployment benefits and compensation for short-time work

Parliament has authorised the government to derogate by ordinance from a number of legal provisions concerning unemployment benefits and compensation for short-time work, to the extent necessary to fight the coronavirus (COVID-19) and mitigate its effects.

Art. 94a of the [Act](#) on Unemployment Insurance and Insolvency Compensation (Gesetz über die Arbeitslosenversicherung und die Insolvenzschiädigung, Arbeitslosenversicherungsgesetz, ALVG, LR 837.0).



The government has made use of this authorisation by issuing several special provisions in a specific ordinance.

To mitigate the economic impacts of the coronavirus (COVID-19), this Ordinance facilitates the payment of unemployment benefits and short-time work compensation.

The following provisions are examples:

If an employment relationship is terminated by the employer due to the coronavirus pandemic before the expiry of the legally or contractually agreed notice period, the loss of working hours is deemed to be chargeable.

Work loss caused by the coronavirus is, in principle, considered to be chargeable if it is associated with a decline in the demand for goods and services, an order of official measures or with other circumstances for which the employer is not responsible.

Art. 1(2), 3, and 8 of the [Ordinance](#) on temporary unemployment insurance measures in connection with the coronavirus (COVID-19) (Verordnung über befristete Massnahmen im Bereich der Arbeitslosenversicherung in Zusammenhang mit dem Coronavirus, COVID-19, COVID-19-ALV, LR 837.012).

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

With the Brexit, the United Kingdom will not only leave the EU, it will also leave the European Economic Area (EEA). The EEA Exit Agreement was [signed](#) in London on 28 January 2020 and approved by the Liechtenstein Parliament (Landtag) on 29 January 2020. It has been applied provisionally since 1 February 2020. This is ensured by the Brexit Transitional [Act](#) (Brexit-Übergangsgesetz, Brexit-ÜG, LR 632.61, cf. Liechtensteinisches Landesgesetzblatt No. 50 of 31 January 2020).

Lithuania

Summary

(I) The Lithuanian legislator has amended the legal framework to allow employers to use the 'idle time' regulation in a more flexible way to cope with the challenges of COVID-19.

(II) In addition, financial support incentives have been adopted.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

The government and Parliament continue to modify the national system aimed at easing the burden for employees caused by the quarantine. As discussed previously (see also March 2020 Flash Report), the country has chosen the path of amending the traditional and well-known 'idle-time' (*prastova* – in Lithuanian) regulation, rather than to ameliorate short-time work (*kurz-Arbeit*) regulation, which was introduced in the new Labour Code 2017.

Just 10 days after the first amendment of the Labour Code (Law No. XIII-2821, Register of Legal Acts, 2020, No. 5702), Parliament again amended Article 47 of the Labour Code (Law No. XIII-2832, Register of Legal Acts, 2020, No. 7195). Basically, it has created a unique single regulation on 'idle time of workers due to quarantine', which differs from 'idle time' due to other objective reasons on the part of the employer. The new regulation (Article 47 (3) of the Labour Code) determines the following rules on 'idle time of workers due to quarantine':

1. not later than within one working day after informing the employee of idle time, the employer must inform the State Labour Inspectorate thereof in accordance with the procedure established by the Chief State Labor Inspector of the Republic of Lithuania;
2. the employee cannot be required to come to the workplace;
3. during the period of idle time, the employer shall pay the employee a salary of not less than the monthly minimum wage. Part of the employer's wage costs incurred for downtime shall be reimbursed in the amount and in accordance with the procedure established by the Law on Employment of the Republic of Lithuania;
4. the employer may determine partial idle time for the employee by reducing his/her number of working days per week (keeping at least two working days) or the number of working hours per day (keeping at least three working hours) for a certain period of time. In that case, the working time shall be remunerated pro rata temporis.

In addition, the amendment of 07 April 2020 to the Law on Employment of the Republic of Lithuania (Register of Legal Acts, 2020, No. 7511) added more state financial support possibilities for the State Employment Agency (*Užimtumo Tarnyba* - in Lithuanian):

- Employers providing vocational training in the form of an apprenticeship are reimbursed 40 per cent of the apprentice's salary since the day of the announcement of the state of emergency and quarantine by the Government of the Republic of Lithuania;
- Employers who, due to the quarantine, have declared idle time but who retain jobs shall be paid a wage subsidy of 70 per cent (but not more than 150 per cent of the amount of the monthly minimum wage) or 90 per cent (but not more than 100 per cent of the monthly minimum wage). Employers who have been paid a



- wage subsidy for the employees specified must retain at least 50 per cent of the jobs for at least 3 months after the end of the payment of the wage subsidy;
- All self-employed individuals will be eligible to receive a monthly flat-rate payment of EUR 275.

The government has also approved a post-quarantine programme, which lays down the list of financial measures to help companies and self-employed persons.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Luxembourg

Summary

Changes have been made to the temporary legislation related to the COVID-19 pandemic.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 General information

No new laws or bills relating to labour law have been introduced, except for temporary measures in the context of the COVID-19 crisis. The March Flash Report, reported on initial legislative measures that had been taken. *In this Flash Report, all changes and new information are highlighted in italics.*

In Luxembourg, a state of emergency (*état de crise*) was declared by the government ([Arrêté ministériel du 16 mars 2020 portant sur diverses mesures relatives à la lutte contre la propagation du virus covid-19](#) and [Règlement grand-ducal du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19](#)) and confirmed by the Chamber of Deputies ([Loi du 24 mars 2020 portant prorogation de l'état de crise déclaré par le règlement grand-ducal du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19](#)), in accordance with Article 32 (4) of the Constitution. The government can thus take any regulatory measures that may derogate from existing laws. These regulations cease to have effect at the end of the state of emergency.

Many measures similar to those of neighbouring countries have been taken, such as the closure of all construction sites and non-essential businesses. *Construction sites could open again on 20 April.*

Numerous derogatory rules have been put in place, for example in medical, tax and company law. A massive support plan for businesses and self-employed persons has been put in place. Eviction from residential and commercial leases has been suspended.

The regulation of 18 March 2020, *as amended*, defines the following activities:

Authorised Economic Activities	Activities essential for the maintenance of the vital interests of the population and the country
<ul style="list-style-type: none"> commercial stores that sell mainly food products; pharmacies; opticians; businesses that sell mainly animal feed; «do-it-yourself and gardening businesses, and businesses selling mainly seasonal products for planting» (17 April) (Règlement grand-ducal du 1er avril 2020 portant modification du règlement grand-ducal modifié du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19); 	<ul style="list-style-type: none"> public services necessary for the proper functioning of the State; the health and care sector, including hospital activities and medical analysis laboratories; the production and distribution of energy and petroleum products; the power supply sector; the production and distribution of water; the collection and treatment of wastewater; waste removal and management; public transport;

<ul style="list-style-type: none"> • «businesses that primarily sell construction products and equipment that are essential to the proper use of the building for which the products and equipment are intended» (17 April); • telecommunications services; • businesses that sell mainly hygiene products, washing and sanitary equipment; • fuel sales services and gas stations; • passenger transport activities; • distributors and shops specialising in medical and health equipment; • medical pedicure limited to medical and non-cosmetic care; • press distribution businesses; • financial and insurance institutions; • postal services; • dry cleaning and laundry services; • funeral services; • «construction, renovation and transformation activities» (17 April); • «troubleshooting, maintenance, overhaul, repair, relocation and decontamination activities» (17 April); • «the activities of gardeners and landscapers» (17 April). 	<ul style="list-style-type: none"> • systems for the exchange, payment and settlement of instruments; • postal and telecommunications services; • security, cash transportation and cleaning services; • essential activities relating to the functioning of the financial sector and the insurance and reinsurance sector.
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1.1.2 Impact on employment relationships

Many establishments have been forced to close because of the crisis measures, while others are no longer able to ensure their activity, notably due to the disruption in the supply chain. It is a criminal offence to continue operating businesses in closed sectors.

It can therefore be argued that this is a case of *force majeure* on the part of the employer, so that:

- by application of the general rules of the law of obligations, the employer can no longer be obligated to pay the employees' salaries;
- by virtue of Article L. 124-1 paragraph 3 Labour Code (hereinafter: LC; never applied to our knowledge), the employer can dismiss employees for economic reasons without having to respect the notice periods.

However, this is hypothetical reasoning. For the time being, the government's aim is to retain employment to the extent possible, in particular through short-time work (*chômage partiel*).

1.1.3 Short-time work

Luxembourg had a scheme in place to avoid redundancies for cyclical/economic reasons (*chômage conjoncturel*) for undertakings facing difficulties of a mainly economic and temporary nature (Article L. 511-1s. LC). This system proved its value during the

financial crisis of 2008/2009. Since then, the scheme has persisted, but on average, only around 30 companies have made use of it.

The scheme has been 'reactivated' and adapted in the context of the current health crisis caused by COVID-19, on the one hand, because some companies no longer have the right to work or have had to sharply reduce their activity, and on the other hand, because companies are having difficulties transporting their supplies and selling their products.

The central features of this scheme are as follows:

- The obligation to consult the staff representatives and the trade union organisations beforehand continues to apply (Article L. 511-6 ([Règlement grand-ducal du 27 mars 2020 portant modification temporaire de l'article 2 du règlement grand-ducal modifié du 15 septembre 1975 portant fixation du taux d'indemnisation des chômeurs partiels](#)));
- Due to the large volume of requests, the request can only be made using the online procedure;
- The duration of the reduction in working time may not exceed 1 022 hours per calendar year (Article L. 511-5). It is to be hoped that the crisis will not force this threshold to be exploited;
- Applications are to be renewed every month;
- By way of derogation from the general rules (Article L. 511-9), apprentices can benefit from statutory unemployment;
- An advance equivalent to 80 per cent of the wage bill for short-time workers will be paid to companies. The law has been amended to ensure that no partially unemployed employee receives a wage lower than the social minimum wage for unskilled workers ([Règlement grand-ducal du 27 mars 2020 portant modification temporaire de l'article 2 du règlement grand-ducal modifié du 15 septembre 1975 portant fixation du taux d'indemnisation des chômeurs partiels](#));
- The aid is also capped at 250 per cent of the social minimum wage;
- *Under normal circumstances, the employer's application must be accompanied by a statement countersigned by the employee confirming that s/he has received the compensation (Article L. 511-13). During times of crisis, it suffices for this statement to be countersigned by the staff delegation (delegation du personnel), if one exists ([Règlement grand-ducal du 29 avril 2020 portant dérogation aux dispositions des articles L. 511-13 et L. 621-3 du Code du travail relatifs à la procédure en matière de chômage partiel](#));*
- There is a procedural difference depending on the direct or indirect impact of the crisis on the company's activity:
 - Normally, the Economic Affairs Committee is notified of applications (Article L. 511-6 (2)). Companies that are indirectly impacted companies must follow this standard procedure;

- Companies that can no longer operate due to a government decision are automatically eligible for short-time work without the need for an agreement of the Economic Affairs Committee. Their applications are therefore directly processed by ADEM (Luxembourg National Employment Service).

Staff may be fully or partly put on short-time work; an employee may be put on short-time work for the entire month or for a certain fraction of working time only.

According to Article L. 511-3, the employer undertakes to retain the employment contract of his/her staff. *However, the scope and consequences of this prohibition are not entirely clear.*

1.1.4 Telework

Telework is strongly encouraged by the government. In the civil service, the Grand-Ducal regulation on telework has been repealed ([Règlement grand-ducal du 18 mars 2020 portant abrogation du règlement grand-ducal du 10 octobre 2012 déterminant les conditions générales relatives à l'exercice du télétravail dans la fonction publique](#)). For employees, all the rules laid down in the 2009 Convention (last renewal of the declaration of general obligation: [Règlement grand-ducal du 15 mars 2016 portant déclaration d'obligation générale d'une convention relative au régime juridique du télétravail conclue entre l'Union des Entreprises Luxembourgeoises, d'une part et les syndicats OGB-L et LCGB, d'autre part](#)) (based on the EU Convention on Telework) are in principle to be respected. In particular, this would mean that:

- Telework must be voluntary on the part of both the employer and the employee. Given the crisis situation and the fact that it is a matter of protecting the safety and health of workers, it can, however, be considered that the employer can impose this form of work. According to the ITM, the employer is entitled to impose telework on its employees in order to fulfil its legal obligation to ensure the safety and health of employees. However, the employer can refuse an employee's request to telework, depending on the needs of the company;
- The employment contract must be supplemented by a number of mandatory clauses;
- An adaptation period is to be agreed, lasting 3 and 12 months. In view of the temporary nature of this crisis, it can be argued that this obligation is not applicable;
- The staff delegation must be informed in advance;
- The employer must respect the privacy of the employee and the rules on the protection of personal data;
- etc.

A particular problem arises in Luxembourg because of the large number of cross-border commuters, who represent almost 50 per cent of the workforce. However, beyond a certain number of teleworking days per year, they are subject to taxation and social security in their country of residence.

With France, an agreement has been reached in the sense that for the duration of the crisis, telework days are not counted towards the ordinary maximum of 29 days. A similar agreement was reached with Belgium concerning the 24-day limit for Belgian cross-border commuters. *Talks with Germany lasted longer, but in the meantime, an agreement has been reached, neutralising the hours worked during the crisis from the 19-day limit that prevails under normal circumstances; this agreement is retroactive to 11 March 2020.*

It was agreed with the neighbouring countries to define the concrete modalities of these agreements later.

1.1.5 Hiring

1.1.5.1 Declaration of vacancies

Under normal circumstances and in times of crisis, the employer must inform ADEM of all vacancies (Article L. 622-4 LC). If, after 3 weeks, ADEM has not proposed a candidate who meets the required profile, the employer may request a certificate stating that it has the right to recruit the person of its choice for the post. Even if this obligation is not always respected in practice, the Code nevertheless provides for a fine of EUR 251 to EUR 2 500 to be paid by the employer who recruits in violation of this procedure (however, this fine does not appear to be applied in practice). From 03 April, the time limit for ADEM to propose a suitable candidate was increased to 6 weeks ([Article 2 du Règlement grand-ducal du 3 avril 2020 portant modification du règlement grand-ducal du 27 mars 2020 portant dérogation aux articles L.521-9., L.521-11., L.524-5., L.543-11., L.543-20., L.552-2. du Code du travail et aux articles 8 et 10 du règlement grand-ducal du 14 octobre 2002 concernant le mode de désignation et d'indemnisation des membres, les règles de fonctionnement et les délais de procédure de la commission mixte de reclassement des travailleurs incapables à exercer leur dernier poste de travail](#)).

1.1.5.2 Working despite early retirement

While the hiring of retirees (retraités) is lawful and does not pose difficulties in terms of combining pension (old-age pension, pension de vieillesse) and a salary, the situation is different for employees in early retirement (préretraite). For the latter, the government has facilitated their hiring in one of the sectors listed in the table by two temporary measures during the crisis ([Règlement grand-ducal du 1er avril 2020 portant dérogation à l'article L. 585-6 du Code du travail](#)):

- *The salary paid is neutralised in relation to the calculation of the annual ancillary income of the employee in early retirement. Since this salary is neutralised, the employee in early retirement should not be required to inform his/her first employer and ADEM of this new employment. On the other hand, the employer must communicate the list of respective employees to the Ministry of Labour;*
- *The rule according to which entitlement to early retirement benefits automatically ceases if the beneficiary carries out an activity providing him/her with an income which, over a calendar year, exceeds 50 per cent of the minimum social minimum wage per month (Article L. 585-6 point 5) is suspended.*

1.1.6 Probation period

1.1.6.1 Two cases of suspension

In the event of suspension of the performance of the contract of an employee (Article L. 121-5 (2) LC) or an apprentice (Article L. 111-3 (2)), the probation period (période d'essai) is extended by a period equal to that of the suspension, without the extension of the probation period exceeding one month. In practice, it is the periods of incapacity for work due to the employee's illness that lead to such a suspension. Since leave for family reasons is assimilated to such a period, the suspension also applies to employees who have 'self-prescribed' the right to stay with their children; the same applies to leave for family support.

In the context of COVID-19, an additional rule of suspension of the probation period has been introduced which concerns:

- *companies directly affected by government closure decisions, i.e. in principle, all activities except those mentioned in the table above;*
- *companies introducing short-time work due to COVID-19. Other forms of cyclical unemployment are not covered.*

1.1.6.2 Scope of suspension

The scope of suspension is not clear.

The suspension affects the following contracts:

- *Apprenticeship contracts. These contracts automatically include a 3-month probation period (Article L. 111-3);*
- *Employment contracts of indefinite duration. For these contracts, a probation period of 2 weeks to 6 months may be agreed either in the individual contract or in the collective bargaining agreement (Article L. 121-5). In some cases, the maximum duration is 3 or 12 months;*
- *Fixed-term employment contracts. They may contain a probation period similar to those for open-ended contracts (Article L. 122-11);*
- *Assignment contracts. For temporary workers, the probation period may only last between 3 and 8 working days, depending on the duration of the assignment (Article L. 131-7 (2)).*

1.1.6.3 Commencement of suspension

The suspension takes effect:

- *in "affected" businesses from the time the government closure decision is made. For most activities, the Grand-Ducal Regulation of 18 March 2020 is therefore applicable from that same date;*
- *in other companies introducing short-time work, from the consent of the employee concerned to this scheme. However, as we have seen, partial unemployment may not entail the employee's entire monthly working time. In*

this case, the question arises whether during working days, the suspension ceases and the probation period continues to run.

The effect of this suspension thus appears to be retroactive, which in particular raises the question of dismissal during the probation period that occurred in the interval between the suspension and the end of the probation period.

1.1.6.4 End of suspension

The suspension ceases at the end of the state of emergency. According to this formulation, neither the fact that the employee returns to work, nor the fact that the company can assume its operations again (e.g. in the event of a selective restart of the economy), nor the fact that the employee ceases to be on short-time work has any impact. If the probation period has been suspended because the company has closed or the employee is partly unemployed, this suspension will continue until the end of the crisis.

The remaining part of the probation period resumes on the day after the end of the crisis.

1.1.6.5 Impact and consequences of the suspension

It is unclear what the effect of the suspension of the probation clause (clause d'essai) is. The wording of the Grand-Ducal [Regulation](#) leaves many questions open as to the scope of the suspension, its duration and its effects. The interaction between the "classical" suspension (illness, leave for family reasons) and the new suspension is not settled; in any case, there cannot be a double suspension and extension of the probation period for an employee who is on sick leave in a company affected by the closure.

The suspension applies to both the employer and the employee. An employee who wants to resign is therefore faced with the same uncertainties as with the notice period s/he must respect.

1.1.7 Free movement

At the national level, moving in public spaces is, in principle, prohibited, except for certain activities, including travel to the workplace for the exercise of professional activity (Article 1 of the Grand-Ducal Regulation of 18 March 2020).

It is, in principle, the responsibility of the employee to arrive at his/her place of work. If the employee was previously accustomed to coming to the workplace by individual transport, s/he will no longer encounter the problem of traffic jams at peak times. On the other hand, cross-border commuters are subject to border controls. Those who use public transport are faced with a substantial reduction in this offer. There is no case law on the subject, but in cases where the employee is not at fault (i.e. where a far-sighted employee could not have avoided it), it can be considered a case of *force majeure*. Lost working hours would not have to be paid, but late arrival at work would not constitute a punishable offence, either.

At the cross-border level, the large number of cross-border commuters, especially in the medical and hospital sector, puts the Grand Duchy in a difficult situation due to restrictions on the free movement of workers as a result of the closure of borders.

For the time being, agreements have been reached so that frontier workers can come and work in Luxembourg. They must be in possession of forms drawn up by their employer (e.g. for [Germany](#)).

1.1.8 Sickness leave

Medical practices are supposed to limit the physical intake of patients to serious and urgent cases. Regulations have been adapted to allow teleconsultation in the context of the epidemic ([Règlement grand-ducal du 17 mars 2020 modifiant le règlement grand-ducal modifié du 21 décembre 1998 arrêtant la nomenclature des actes et services des médecins pris en charge par l'assurance maladie](#)). Therefore, medical certificates can also be produced in electronic form. *On 04 May, medical practices will be allowed to reopen, but teleconsultation is still strongly recommended* ([Règlement grand-ducal du 28 avril 2020 portant modification du règlement grand-ducal modifié du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19](#)).

In addition to private platforms offering teleconsultation and document transmission services, a public platform has been set up ([eConsult service](#)).

For the rest, the usual obligations remain in force, namely that the employee must inform his/her employer on the first day of his/her absence and that the certificate must have reached the employer by the third day of absence, at the latest.

Persons in quarantine are considered to be on sick leave.

During the course of the illness, the employee receives sick pay and is protected against any form of dismissal.

1.1.8.1 Protection against dismissal

If the employee (or apprentice) has duly fulfilled his/her information obligations, for the initial illness and for any extension thereof, s/he is protected against dismissal. The employer is not entitled to dismiss, neither with notice, nor with immediate effect and neither for economic nor for personal reasons. Any dismissal by the employer would automatically be considered unfair.

Such protection usually lasts from the beginning of the declared illness until the end of the incapacity for work documented by a medical certificate. However, the period of protection may not exceed a period of 26 weeks from the date on which the incapacity for work arose. At the end of this period of approximately half a year, the employer may dismiss the employee according to the ordinary rules.

In a first step, the government decided to suspend the 26-week protection period for the duration of the state of emergency ([Règlement grand-ducal du 8 avril 2020 portant dérogation à l'article L. 121-6 du Code du travail](#)). This suspension entailed a large number of questions and uncertainties.

In an attempt to rectify the situation, the government issued an amending Grand-Ducal regulation 9 days later ([Règlement grand-ducal du 17 avril 2020 portant modification du règlement grand-ducal du 8 avril 2020 portant dérogation à l'article L. 121-6 du Code du travail](#)), which in its effects also appears to be retroactive, leaving open the question of the intermediate period between the two Grand-Ducal regulations. Henceforth, the 26-week period is no longer 'suspended', but 'extended' by a period between 17 April 2020 and the end of the state of emergency.

On the other hand, at the end of the initial 26-week period, the employer may dismiss the employee with immediate effect for serious reasons. There are therefore two phases of protection, one during which all dismissals are prohibited, and a second during which only dismissal with immediate effect is possible.

1.1.8.2 Sick pay

In Luxembourg, financial compensation corresponds to 100 per cent of the salary, with no waiting days (jour de carence).

Normally, the employer has to pay, according to a complex mechanism, for the first weeks of illness before the Health Fund (CNS) takes over. This rule has been relaxed in favour of employers: the Fund will pay sickness cash benefits from 01 April until the end of the calendar month in which the state of emergency ends (Article 2 du [règlement grand-ducal du 3 avril 2020 portant dérogation aux dispositions des articles 11, alinéa 2, 12, alinéa 3, 14, alinéa 2 et 428, alinéa 4 du Code de la sécurité sociale et L.121-6, paragraphe 3 du Code du travail](#)).

1.1.8.3 Automatic contract termination when sick pay expires

Any employment contract automatically ceases on the date on which sickness benefits are exhausted (Article L. 125-4 LC). This right to financial compensation is limited to a total of 78 weeks (before 2019: 52 weeks) over a period of 104 weeks (Article 14 (2) CSS).

To prevent employees from losing their jobs during the crisis, it has been specified that periods of incapacity for work between 18 March and the end of the crisis are not taken into account for the calculation of these 78 weeks (Article 1er du [règlement grand-ducal du 3 avril 2020 portant dérogation aux dispositions des articles 11, alinéa 2, 12, alinéa 3, 14, alinéa 2 et 428, alinéa 4 du Code de la sécurité sociale et L.121-6, paragraphe 3 du Code du travail](#)). Although this regulation did not come into force until 03 April, it is retroactive in that it immunises the incapacity for work from 18 March onwards. There is therefore uncertainty as to which employment contracts would have ended in the meantime.

1.1.9 Annual leave

Travel restrictions, including the cancellation of vacation departures, raise questions about annual leave (*congé annuel*). Few things are dealt with specifically, and case law does not provide clear answers to all questions. Nevertheless, the principle is that the employee shall request leave and the employer may reject it, in particular due to the needs of the service (Article L. 233-10 LC).

Given the current circumstances, in particular the fact that a number of employees are absent due to illness, quarantine and leave for family reasons, the employer may invoke the needs of the service to reject leave requests.

For activities considered "essential for the maintenance of the vital interests of the population and the country" (see list above), it is explicitly stated that the employer may reject any leave during a state of emergency (Article 5 of the Grand-Ducal Regulation of 18 March 2020). *Since 03 April, the employer can also cancel leave already granted in these sectors ([Règlement grand-ducal du 3 avril 2020 portant modification du règlement grand-ducal modifié du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19](#))*. By mutual agreement, it is always possible to cancel a leave that has already been agreed.

On the other hand, a unilaterally fixed leave cannot be unilaterally revoked by the other party. Thus, in principle:

- the employer cannot unilaterally cancel an employee's leave because of the needs of the company;

- The employee cannot unilaterally cancel his/her leave, for example, on the grounds that s/he cannot take leave.

With regard to collective leave in certain sectors, such as construction, first voices are being raised calling for its reduction or cancellation, since all building sites are standing still.

1.1.10 Family leave

Special leave in case of illness of a child (*congé pour raisons familiales*) was introduced in 1999 ([Loi du 12 février 1999 portant création d'un congé parental et d'un congé pour raisons familiales](#)) and was modified in 2017 (see also December 2017 Flash Report). This leave is regulated in Articles L. 234-50ff LC. As of the age of 13, leave is only due in the event of hospitalisation of the child (Article L. 234-52). Parents are entitled to a limited number of days of leave, calculated by age group of the child, when their presence with the child is certified as necessary by a doctor. An extension of this period can only be granted on the advice of the social security bodies for certain very serious illnesses.

Because of the health crisis, the regulations on this leave were adapted in two stages:

- On 12 March, this leave was extended to the case of "quarantine of a child, decided by the doctor of the Health Directorate" ([Règlement grand-ducal du 12 mars 2020 modifiant le règlement grand-ducal du 10 mai 1999 définissant les maladies ou déficiences d'une gravité exceptionnelle en application de l'article 15, alinéa 2 de la loi du 12 février 1999 portant création d'un congé parental et d'un congé pour raisons familiales](#));
- All schools and child care facilities have been closed since 16 March 2020. According to a regulation of 18 March 2020, with retroactive effect to 14 March, the right to leave is also applicable for: "*measures of isolation, eviction or home support of children for imperative reasons of public health decided by the competent authorities to deal with the spread of an epidemic*" ([Règlement grand-ducal du 18 mars 2020 modifiant le règlement grand-ducal modifié du 10 mai 1999 définissant les maladies ou déficiences d'une gravité exceptionnelle en application de l'article 15, alinéa 2 de la loi du 12 février 1999 portant création d'un congé parental et d'un congé pour raisons familiales](#)).

Thus, an additional right to this leave has been introduced for all parents caring for a child under the age of 13 years.

For children with a permanent disability or a permanent incapacity of at least 50 per cent of physical or mental capacity, the right to leave persists until the age of 18 (they do not need to be hospitalised. [Règlement grand-ducal du 25 mars 2020 portant modification de l'article L. 234-52 du Code du travail](#); voir aussi le projet de loi n° 7544).

The government calls for a reasoned use of this mechanism and to resort to it only if the employee has no other means of ensuring care for the children, while recalling that care should not be provided by vulnerable persons. Leave can be taken even if the employee has the possibility to tele. It can also be taken during school holidays.

Parents may alternate leave for family reasons. However, it is recommended that if one parent holds a strategically important position in the context of the pandemic for the other parent to take the leave.

To benefit from this leave, the employee must first inform his/her employer orally or in writing on the day of the absence (Article L. 234-53 LC).

S/he must then fill in a [specific form](#) and send it to the employer and to the National Health Fund (*Caisse nationale de santé*).

On the other hand, in order to avoid abuses, it has also been decided that an employee cannot benefit from the leave if the other parent is on short-time work ([Règlement grand-ducal du 27 mars 2020 portant dérogation à l'article L. 234-51 du Code du travail](#)). The forms have been adapted accordingly.

In the form, the employee signs a declaration of honour as follows: "*that neither the applicant employee, nor the other parent, nor any other member of the household in question is on short-time work ... during the period for which the leave is requested and that no other means of child care is available (including a specific structure made available for child care)*".

The same certificate states that it is "equivalent to a medical certificate" within the meaning of the Labour Code with regard to the employer and the Health Fund.

For most of the employees taking this leave, the payment of salaries is the responsibility of the employer and not of the Health Fund. The *Mutualité des Employeurs* in principle reimburses 80 per cent of this amount to the employers. In order to support companies, it is envisaged that this reimbursement will be made in advance (further information is available [here](#)).

1.1.11 Parental leave

Without a precise legal basis, the Family Fund (*Caisse pour l'avenir des enfants*) has decided that in view of the context of the pandemic, it is exceptionally possible to interrupt parental leave in progress in the event of a professional obligation and the need to return to work.

The compensation (*indemnité de congé parental*) does not have to be refunded and the portion not taken may, with the employer's agreement, be taken at the end of the interruption. A [special form](#) has been put online to request such an interruption. This form must be signed by the employer and the employee.

1.1.12 Special leave for volunteers

The specific rules on leave of absence for rescue volunteers (*volontaires des services de secours*) have been made applicable to employees of approved relief associations and organisations provided by their employer to take part in the missions entrusted to the relief services in the context of the management of the pandemic ([Règlement grand-ducal du 12 mars 2020 modifiant le règlement grand-ducal du 22 octobre 2009 relatif aux centres de traitement et aux centres de vaccination dans le cadre de la gestion d'une pandémie grippale](#)). In fact, the 2009 regulations for influenza pandemics were extended to all pandemics. This special leave was detailed in the ECE report on volunteering.

1.1.13 Family support leave

On 03 April, a "Family Support Leave" (*congé pour soutien familial*) was implemented retroactively to 18 March. The conditions for this leave are, in summary, as follows:

- 1) An adult in a situation of disability or an elderly person was a client of an "approved service" (*service agréé*) (services for persons in a situation of disability and psycho-geriatric centres for the elderly);

- 2) *This approved service stopped all or part of its activities in the context of the crisis notifying the Minister of this decision;*
- 3) *The employee provides home care for the person with whom s/he resides;*
- 4) *Neither the employee nor any other member of the household is on short-time work during the period for which the leave is requested, and no other means of care is available.*

In terms of procedure, the employee must comply with the following obligations:

- *On the first day of absence, the employee must inform his/her employer or representatives orally or in writing;*
- *The employee must ask the Minister of Family Affairs, by means of a form to certify the necessity of the leave. Unlike the leave for family reasons, there is therefore no "self-attestation" by the employee. In case of agreement, the Minister returns a certificate to the employer, which is equivalent to a medical certificate for the employer and the CNS.*

The period of leave is treated as a period of incapacity for work due to illness or accident "in matters of social security and protection at work". Thus:

- *The employee will benefit from sick pay, paid from the first day by the Fund;*
- *During the family support leave, the employee is protected against dismissal in the sense that any dismissal with notice against him/her would be automatically considered abusive. Despite the assimilation to sick leave, the Grand-Ducal Regulation authorises dismissal with immediate effect for serious misconduct. Fixed-term contracts expire at the end of the contract and cases of termination/termination provided by law remain applicable.*

The duration of the leave may not exceed the duration of the state of emergency and also ends if the approved department notifies of the (partial) resumption of its activities. It may be split between several employees to care for the same elderly or disabled adult. As with family leave, the government recommends that if one member of the household is engaged in a strategically important activity (e.g. health professional), the other member of the household should take the leave.

The [Grand-Ducal Regulation](#) further specifies that any dispute relating to such leave falls within the jurisdiction of the labour courts in accordance with the procedure for unfair dismissal.

1.1.14 Working time

According to Article L. 211-12 (1) LC, the maximum working time, including overtime or additional hours, may not exceed 10 hours per day or 48 hours per week. The second paragraph of this article provides that a Grand-Ducal regulation may determine a limited number of sectors, branches, activities or professions in which the applicable collective labour agreement or, failing that, the Minister of Labour may authorise a maximum daily working time of 12 hours, provided, however, that the actual weekly working time does not exceed 40 hours.

A Grand-Ducal regulation has eased these limits ([Règlement grand-ducal du 27 mars 2020 portant introduction d'une dérogation à l'article L. 211-12 du Code du travail](#)). By way of derogation from the aforementioned Article L. 211-12 and from collective

agreements, the maximum working time may be extended to 12 hours per day and 60 hours per week. The recitals of this regulation refer explicitly to the Directive on Working Time and to the case law of the European Court of Justice. A request must be addressed to the Minister of Labour (Article 2) and must contain certain indications, in particular, the maximum daily and weekly working time requested, the number of employees concerned, the opinion of the staff delegation, a statement of reasons for the request for derogation and its beneficial effects. Where appropriate, the request shall also indicate the compensatory measures proposed to the employees concerned.

Article 4 of the Regulation further formulates a restriction in rather vague terms: "*The exemptions requested must be clearly limited to what is indispensable and strictly necessary, they must in all cases be adequate and proportionate to the aim pursued, which must be clearly stated by the applicant*".

The period of validity of the ministerial authorisation is limited by the duration of the state of emergency.

More specifically, the weekly working time of fixed-term contracts concluded with students (*étudiants et élèves*), usually limited to 15 hours per week (Article L. 122-1 in fine), may be up to 40 hours for the activities mentioned in the above table ([Règlement grand-ducal du 27 mars 2020 portant dérogation à l'article L. 122-1 du Code du travail](#)).

1.1.15 Recruitment and professional insertion

The problems of the absence of employees who are ill or in quarantine should undoubtedly constitute temporary absences justifying the use of fixed-term contracts (CDD) and temporary work.

Hiring restrictions exist for companies taking advantage of short-time work. These companies are therefore not supposed to recruit employees on fixed-term contracts or temporary workers, nor to renew such contracts. However, it should be remembered that if certain parts of the business are downsized and justify recourse to short-time work, it is possible that positions may need to be urgently filled in other parts of the business, and require skills that are not available in-house.

In the case of assisted reintegration contracts (*contrat de réinsertion-emploi*), the employer must normally pay the Employment Fund an amount corresponding to 50 per cent of the minimum social wage (Article L. 524-5 LC), an obligation which is suspended for the duration of the crisis (Article 3). For the employment support contracts (*contrats d'appui-emploi*) that ADEM may offer to young job seekers in non-commercial businesses, the employer must pay an indemnity corresponding to the minimum social wage and is reimbursed by public funds up to 75 per cent during the first 12 months and 50 per cent in the event of an extension (Article L. 543-11 (3)). During the state of emergency, these reimbursements were [increased](#) to 100 per cent. In the commercial sector, an employment initiation contract (*contrat d'initiation à l'emploi*) may be offered; during the first 12 months, public funds reimburse 50 per cent of the indemnity and in the event of an extension, 30 per cent of the indemnity (Article L. 543-20). Here again, the reimbursement has been raised to 100 per cent (Article 5).

1.1.16 Dismissals and unemployment

There are currently no restrictions on lay-offs due to the crisis. However, a restriction on dismissals may result from the fact that the company is resorting to short-time work.

1.1.16.1 Collective redundancies

In the case of collective redundancies, the employer may not dismiss employees before having completed negotiations of a redundancy plan with the social partners (staff delegation and/or trade unions). Any economic dismissal (for reasons not inherent to the person of the employee) is null and void (Article L. 166-2 (8) LC). The employee may, within 15 days, have this nullity declared under an accelerated procedure. If s/he does not request the nullity of his/her dismissal, s/he is entitled to severance pay and may file a claim of unfair dismissal.

As a trigger for the procedure, the employer must consider a certain number of "dismissals" within a certain period of time, i.e.:

- *for the same period of 30 days of at least 7 employees, or*
- *for the same 90-day period, of at least 15 employees.*

When it comes to negotiating a social plan, there is an economic urgency for the company. For this reason, the law sets the maximum duration of the negotiations at 15 days, after which the outcome of the negotiations is to be recorded for transmission to ADEM and then to ITM (Article L. 166-2 (5)). A conciliation procedure is then to be initiated before the National Conciliation Office (Office National de Conciliation, hereinafter: ONC). Only when this procedure has been completed—whether by an agreement on a social plan or by a finding of non-conciliation—can the employer decide on the dismissals. Here again, because of the urgency of the matter, the duration of the conciliation procedure is limited to 15 days (Article L. 166-2 (7)); it is considerably shorter than other procedures before the ONC.

However, because of the crisis, all the time limits laid down in paragraphs 5 to 8 of Article L. 162-2 have been suspended ([Règlement grand-ducal du 1er avril 2020 portant dérogation aux délais fixés à l'article L. 166-2 du Code du travail](#)). This includes:

- *the maximum period of 15 days that amicable negotiations may last;*
- *the maximum period of 15 days that the conciliation procedure may last;*
- *the period of 15 days within which the employee may claim the nullity of his/her dismissal.*

As a result, companies cannot carry out collective redundancies during the crisis. Compared to normal deadlines, this substantial extension of the duration of a collective redundancy may seriously affect or even cause the insolvency of companies that are already facing difficulties.

1.1.16.2 Unemployment

The unemployment benefit scheme has been relaxed in several respects (Règlement grand-ducal du 27 mars 2020, op cit.), in particular with regard to the registration and signature of the "individualised collaboration agreement" (*convention de collaboration individualisée*) (Article 1). The period of compensation is extended in the sense that unemployment benefits cannot expire during a state of crisis but are extended accordingly (Art. 2). In addition, in order to limit travel, the registration of jobseekers with ADEM is done through an [online form](#).

1.1.17 Occupational health and safety

In a first step, the labour inspectorate (hereinafter: ITM) laid down the following principles:

- The employer must assess the risks of exposure of his/her employees;
- The employer must meet its obligations to inform and raise awareness among staff, particularly with regard to barriers and social distancing;
- The employer must limit the risks of exposure, in particular;
 - By using teleworking;
 - by reorganising the work, especially by making it compulsory to keep a distance of at least 2 metres;
 - by putting in place equipment, such as protective screens;
 - by disinfecting and frequently cleaning the premises, floors and surfaces;
 - by limiting meetings, which should preferably be held by videoconference, to what is necessary. The same applies to any grouping of employees in small spaces;
 - by cancelling or postponing all non-essential travel.

In a second step, a Grand-Ducal Regulation of 17 April 2020 ([Règlement grand-ducal du 17 avril 2020 portant introduction d'une série de mesures en matière de sécurité et santé au travail dans le cadre de la lutte contre le COVID-19](#)) introduced a general framework of occupational safety and health measures to be respected in the context of the health crisis. Its provisions are very general and inspired by European texts; they leave a wide margin of manoeuvre, and therefore also of responsibility, to the employer. These rules are applicable "for the duration of the state of emergency", but it is not unlikely that the legislator will decide that certain specific safety rules will have to be complied with even after the state of crisis.

Both the labour inspectorate and occupational physicians are responsible for monitoring compliance with these rules and for establishing infringements. For criminal sanctions, reference is made to the Labour Code. The sanctions are therefore as follows:

- *for the employer: imprisonment from 8 days to 6 months and/or a fine from EUR 251 to EUR 25 000 (EUR 50 000 for companies and other legal entities);*
- *for the employee: a fine of EUR 251 to EUR 3 000.*

1.1.17.1 Obligations for employers

As for the general safety rules, the main responsibilities lie with the employer. These include the following obligations:

1. *to take appropriate measures for the protection of the safety and health of the employees, to ensure that these measures are adapted to take account of the exceptional circumstances linked to the COVID-19 epidemic and to contribute to the improvement of existing situations to deal with the COVID-19 epidemic ;*

2. *avoid risks and assess any risk to the safety and health of employees that cannot be avoided in relation to these exceptional circumstances related to the COVID-19 epidemic;*
3. *regularly renew this assessment referred to in point 2 and, in any case, whenever there is any change in these exceptional circumstances linked to the COVID-19 epidemic;*
4. *determine, on the basis of the assessment referred to in point 2, the measures to be taken in relation to these exceptional circumstances linked to the COVID-19 epidemic;*
5. *to limit, if necessary, the number of employees exposed or likely to be exposed to risks in relation to these exceptional circumstances linked to the COVID-19 epidemic;*
6. *to inform and train, in collaboration with the staff delegation, the employees on the possible safety and health risks, the precautions to be taken, the wearing and use of protective equipment and clothing and the hygiene requirements that have been taken in the context of these exceptional circumstances linked to the COVID-19 epidemic and to give them the appropriate instructions;*
7. *post signs indicating the risks and preventive measures taken in relation to these exceptional circumstances related to the COVID-19 epidemic;*
8. *arrange the workstations and other premises or workplaces where employees are likely to carry out their work according to these exceptional circumstances related to the COVID-19 epidemic;*
9. *put in place collective protective equipment to ensure the protection of employees in relation to other persons;*
10. *provide employees with personal protective equipment, including appropriate protective clothing, adapted to the exceptional circumstances related to the COVID-19 epidemic;*
11. *ensure that protective clothing and equipment are:*
 - *properly placed in a designated area and stored separately from other clothing;*
 - *cleaned after each use, or, if necessary, destroyed;*
12. *provide employees with appropriate sanitary facilities, access to a water point, soap and disposable paper towels or disinfectants;*
13. *ensure that employees maintain an appropriate physical distance and, failing this, that employees wear a mask or other device to cover the person's nose and mouth and, if necessary, other personal protective equipment;*
14. *ensure that the premises and floors are cleaned regularly;*
15. *ensure that work surfaces are cleaned and disinfected.*

A few additional rules also apply to situations where employees of several undertakings work at the same place.

1.1.17.2 Obligations for employees

Since 20 April 2020 ([Règlement grand-ducal du 17 avril 2020 portant modification du règlement grand-ducal modifié du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19](#)), the wearing of a mask or an equivalent device to cover the nose and mouth is mandatory for any person aged 6 years or more in the following circumstances, regardless of whether the context is professional or not:

- in public transport;*
- for activities that involve an audience (accueillir du public);*
- for authorised economic activities if an interpersonal distance of two metres cannot be maintained.*

According to the specific rules for COVID-19 introduced by the Grand-Ducal regulation of 17 April 2020, employees also have the following obligations:

- to correctly use the protective equipment and protective clothing made available to them in the exceptional circumstances related to the COVID-19 epidemic and to apply the required hygiene measures;*
- to immediately report to the employer and/or designated employees and safety and health representatives any work situation that they have reasonable cause to believe presents a serious and immediate danger to safety and health in the context of the COVID-19 epidemic.*

1.1.18 Medical examinations

For civil servants and assimilated agents, the period within which the medical examination on recruitment must be carried out is suspended for the duration of the state of emergency (Article 9 of the Grand-Ducal Regulation of 18 March 2020). No similar text has yet been voted on for employees under private law contracts.

With regard to the reclassification of persons unfit to occupy their last job, certain procedural deadlines have been suspended (Article 6 du Règlement grand-ducal du 27 mars 2020, op. cit.).

1.1.19 Temporary labour loan

While under normal circumstances, the temporary loan of labour (prêt temporaire de main-d'œuvre) is prohibited, derogations may however be authorised (Article L. 132-1 (1) LC), in particular for employees threatened with dismissal or in a situation of under-employment. This is the case specifically during the crisis and for employees put on short-time work. At the same time, other posts are becoming vacant due to absences due to illness and increased needs in certain sectors.

For this reason, the use of temporary loans is encouraged and a "[JobSwitch](#)" platform has been established.

The employer can thus temporarily make its employees available to other companies. In principle, the measure requires the agreement of the employer, the employee and

the company that will host the employee. If the hiring out lasts less than 8 weeks, a simple notification to ADEM suffices (Article L. 132-1 (5)).

1.1.20 Social security

To help businesses, the social security bodies have decided on temporary measures from 01 April, including the suspension of interest on arrears and forced enforcement of recoveries, as well as fines for late payment. However, all social security contributions are still due (further information is available [here](#)).

The Accident Insurance Association (association d'assurance accident, aaa.lu) website now states that COVID-19 infection in the workplace can be recognised as an occupational disease. According to a press release, at least 12 cases have been recognised as an occupational disease; all cases involved the health sector.

1.1.21 Procedure

The courts are providing reduced services and have decreased the number of hearings ([Arrêté ministériel du 16 mars 2020 portant fixation des audiences des juridictions judiciaires pendant la période du 16 mars 2020 au 3 avril 2020](#)). At the level of the first instance labour courts, ordinary hearings have been suspended, and only urgent cases are being dealt with. This notion is not precisely defined, but it can be considered to include summary proceedings and cases before the President of the Labour Court, for example, nullity in case of dismissal of specially protected persons, applications for provisional admission to unemployment benefits or applications for provisional maintenance of remuneration.

The two chambers of the Court of Appeal dealing with labour law have also limited the number of hearings.

From 04 May, regular court service should progressively be reimplemented.

Initially, only the time limits for proceedings before the courts had been suspended ([Règlement grand-ducal du 25 mars 2020 portant suspension des délais en matière juridictionnelle et adaptation temporaire de certaines autres modalités procédurales](#)). In a second step, with retroactive effect to 26 March, several other time limits were suspended ([Règlement grand-ducal du 1er avril 2020 portant modification du règlement grand-ducal du 25 mars 2020 portant suspension des délais en matière juridictionnelle et adaptation temporaire de certaines autres modalités procédurales](#)). With regard to the labour courts, the following time limits were suspended:

- *Time limits in proceedings, i.e. once the case has been brought. At first instance, proceedings before the labour court are oral, and there are no specific time limits. On appeal, the time limits for pre-trial proceedings (mise en état) are suspended.*
- *The time limits for lodging ordinary and extraordinary appeals, including the 40-day time limit for appealing against first instance judgments of the Labour Tribunal. The effect of the suspension is that the unexpired portion of the time limit continues to run at the end of the state of emergency.*
- *The time limits for bringing the case to court, including the extinctive prescription periods. These include, for example:*
 - *the 3-month period for bringing an action for unfair dismissal (Article L. 124-11 (2) LC).*

- *the 3-year limitation period on salaries.*

For these deadlines:

- *the deadlines expiring during the state of crisis are postponed by two months from the date of the end of the state of crisis;*
- *deadlines that fall due in the month following the end of the crisis are postponed by one month from their due date.*

On the other hand, this suspension does not affect the extrajudicial deadlines to be respected, for example:

- *The one-month period within which the employee and the employer must invoke serious misconduct to dismiss/resign with immediate effect.*
- *The period of one month within which the employee must request the reasons and the period of one month within which the employer must respond to such a request.*

The time limits before the social courts (social security) were also suspended by the regulation of 22 April 2020 ([Règlement grand-ducal du 22 avril 2020 portant suspension des délais en matière de recours non contentieux et contentieux de la sécurité sociale](#)).

In courtrooms, the wearing of a mask or an equivalent device is compulsory if an interpersonal distance of 2 metres cannot be permanently respected ([Règlement grand-ducal du 24 avril 2020 portant modification du règlement grand-ducal modifié du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19](#)).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Malta

Summary

The "Covid-19 Guarantee Scheme" and the "Interest Rate Subsidy Scheme" have been launched.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

In April 2020, two aid schemes were launched:

1. The COVID-19 Guarantee Scheme (CGS)
2. The Interest Rate Subsidy.

1.1.1 The COVID-19 Guarantee Scheme

The Malta Development Bank's COVID-19 Guarantee Scheme (hereinafter: CGS) provides guarantees to commercial banks to enhance access to bank financing for the working capital requirements of businesses in Malta facing a sudden acute liquidity shortage as a result of the COVID-19 outbreak.

The CGS has been approved by the European Commission under the temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (European Commission Press Release).

CGS is part of the wider package of the government's COVID-19 Response Support Programme.

A Guarantee Fund of EUR 350 million has been allocated by the government for the purpose of guaranteeing loans granted by commercial banks in Malta to meet new working capital requirements of businesses facing cashflow disruptions due to the effects of COVID-19.

The CGS will enable the commercial banks to leverage the government's guarantees up to a total portfolio volume of EUR 777.8 million to support all types of businesses. The CGS has been entrusted to the Malta Development Bank (hereinafter: MDB), which is responsible to develop, administer and implement the scheme. The CGS will be intermediated via commercial banks in Malta. Loans will be available from the commercial banks accredited by the MDB. Loan applications are assessed by the commercial banks in line with their credit policy criteria. Final approval rests with the commercial banks.

Description of the Scheme

Maximum individual loan amounts shall be as follows:

- Small and medium-sized enterprises (hereinafter: SMEs): EUR 2 million;
- Large enterprises: EUR 5 million;
- Amounts higher than EUR 2 million but limited to a maximum of EUR 10 million for SMEs; and amounts higher than EUR 5 million but limited to a maximum of EUR 25 million for large enterprises, require prior ad-hoc approval of MDB.

Provided that such amounts do not exceed:

- Double of the annual wage bill of the beneficiary; OR

- 25 per cent of the beneficiary's total turnover in 2019;
- a higher amount, subject to appropriate justification and self-certification, to cover the liquidity needs of SMEs for the coming 18 months and of large enterprises for the coming 12 months.

The interest rate shall be determined by the commercial bank. Commercial banks would need to give an interest rate reduction to beneficiaries of at least one percentage point on the average lending rate as compared to similar facilities prior to the introduction of the guarantee scheme.

The loan term is of a minimum of 18 months to maximum of 48 months. The term can increase to 72 months, subject to additional terms and conditions. Loan terms longer than 72 months will not be covered by the CGS.

The minimum period of 6 months with the possibility of extension to one year on a case-by-case basis. The moratorium applies to both interest and capital repayments.

Eligible costs included in working capital

The CGS covers new working capital loans. Eligible costs under these loans mainly include, but are not limited to:

- Salaries of employees, including social and health security payments;
- Lease for the establishment, including rental costs, energy and water bills, fuel, etc.;
- Unpaid invoices due to a decrease in business revenues in respect of working capital and other;
- similar commitments and in respect of investment expenditures provided that investment expenditures only qualify under the Scheme if they were contracted prior to the approval of this Scheme by the Commission;
- Acquisition of material and stock for the continuation of business;
- Expenses directly related to contracts which were cancelled or postponed because of the COVID-19 outbreak;
- excluding penalties and other liabilities incurred due to non-performance of contracts;
- Maintenance costs.

The CGS shall not cover restructuring or the rescheduling of existing facilities.

Eligible beneficiaries

The CGS will cover all business undertakings established and operating in Malta:

- (a) SMEs: up to 250 employees; and
- (b) large enterprises: employment exceeding 250.

1.1.2 Interest Rate Subsidy Scheme

Following the launching in April 2020 of the MDB COVID-19 Guarantee Scheme (CGS), the Government of Malta has also announced, on 16 April, 2020, a complementary Interest Rate Subsidy scheme as an additional measure to further soften the terms of working capital loans extended by banks under the CGS to businesses experiencing acute liquidity shortages due to the COVID-19 outbreak. The MDB has announced that it has been appointed by the government as the entity responsible for the implementation of the Interest Rate Subsidy scheme. This will enable a more streamlined approach with MDB as the one-stop shop for the management of the CGS



and the interest rate subsidies on loans covered by the CGS. Through the Interest Rate Subsidy Scheme, businesses will be benefitting from a subsidy of up to 2.5 per cent on the interest rate charged by banks during the first two years of working capital loans guaranteed by the CGS. This interest rate subsidy will reinforce the benefits that businesses will obtain through the Government Guarantee Fund of EUR 350 million under the CGS, which include enhanced access to finance, longer repayment terms, a moratorium on both capital and interest and lower interest rates.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Netherlands

Summary

The Dutch Supreme Court has announced preliminary questions for the ECJ on the issue of transfers of undertakings in a situation of bankruptcy; initial evaluations of the economic measures are available, as are the first amendments.

1 National Legislation – Measures to fight the COVID-19 crisis

1.1 General measures to protect public health

On 21 April 2020, the government announced that all general measures reported in Flash Report 03/2020 will remain in force up to and including 19 May 2020, except for the following:

1. Events and gatherings for which organisers would normally be required to apply for a permit or notify the authorities are banned until 1 September 2020 (was 1 June 2020).
2. As of 11 May 2020, primary schools can reopen again, children will go to school for 50 per cent of the time, which will allow schools to distribute the pupils. Secondary schools will be closed until 1 June 2020. It is unsure whether they will be allowed to open afterwards.
3. As of 29 April 2020, children (up to and including 12 years of age) can participate in outdoor organised sports. This is also possible for children between the ages of 13-18, but they must keep a distance of 1.5 metres.

1.2 Economic measures including measures aiming at employment retention

This section contains an update of the most relevant measures that have been introduced to retain employment and that are set out in more detail in Flash Report 03/2020.

1.2.1 Temporary Emergency Bridging Measure to retain employment (NOW)

Regulation by the Minister of Social Affairs and Employment of 31 March 2020 establishing a temporary subsidy scheme as a contribution towards wage costs to retain jobs in exceptional circumstances, [Stcrt. 2020, 19874](#).

The NOW offers employers the possibility to obtain compensation for wage costs. It is a subsidy, not a loan. The scheme is managed by UWV (the Dutch public employment service). The scheme has been available since 6 April 2020. A [fact sheet](#) of UWV published on 1 May 2020 presents the following numbers.

Up to and including 30 April 2020, 114 000 applications had been filed. Most of them have already been processed: approximately 104 000 applications have been granted. The most common reasons for rejection (approx. 6 700 applications) are that the applicant had not provided a wage sum for January 2020 or November 2019 (the reference months).

Advance payments up to a total amount of EUR 1.9 billion have been made. This represents a total amount of EUR 7.2 billion in requested subsidies over a period of three months. It is expected that this amount will increase. With the advance payments, approximately 1.7 million employees have been covered. Approximately 68 per cent of

the approved applications involve employers with 1 to 10 employees. The following sectors together account for a share of 58 per cent of approved applications: hospitality, retail and commercial services. It is furthermore noteworthy that approximately 1 450 requests from temporary employment agencies have been approved.

In the [Decree of 1 May 2020](#), the NOW has been amended as of 5 May 2020. Apart from some technical measures, the main amendment is that in case of a group company, the loss of turnover will not be calculated on an aggregated level, but on a group level. This extension of the measure's scope is subject to additional conditions. First of all, there are demands with respect to the dividend and bonus policy of the group. Secondly, there has to be an agreement with the trade unions or if the group company has less than 20 employees, with the employee representatives. Thirdly, there are additional conditions with respect to the control and prevention of fraud. This amendment has been introduced at the request of Parliament and the social partners.

1.2.2 Temporary benefits for self-employed professionals (TOZO)

Government decree of 17 April 2020 establishing the temporary rules on benefits for self-employed persons who have been financially hit by the consequences of the crisis connected to COVID-19, [Stb. 2020, 118](#).

TOZO consists of income support, depending on the income and household situation, with a maximum of EUR 1 500 (net) per month for a period of three months between March and August. Furthermore, a loan for business capital for a maximum amount of EUR 10 157 is possible. It is possible to request a delay for repayment, and the interest rate shall be lower than under the regular social assistance rules. Although the scheme was established officially under the Decree of 17 April, the municipalities that provide the scheme have started implementing it since the end of March, when they received advance payments from the national government.

Given that the scheme is carried out at the local level, there are no reliable figures on the way the scheme is being used. An inventory of 150 municipalities leads to an estimation that there have been approximately 343 000 requests for assistance. More than 90 per cent of these requests entail income support.

According to a [letter](#) of the Secretary of State of Social Affairs and Employment of 24 April 2020, the scope of the scheme will be extended to self-employed persons who live in the Netherlands and have a business in another Member State as far as income support is concerned. Self-employed persons who have a business in the Netherlands but live in another Member State can apply for the loan that is provided for in the scheme. It is not clear when this will enter into force. The scope will also be extended to those self-employed persons who have reached the state retirement age.

1.2.3 Compensation for entrepreneurs in affected sectors (TOGS)

Policy regulation - compensation for entrepreneurs in sectors affected by COVID-19 of 27 March 2020, Stcrt. 2020, 19159.

The government will award entrepreneurs in a number of sectors affected by the coronavirus measures a one-time compensation of EUR 4 000. The compensation is for those SMEs, with or without staff, that have suffered losses because of the necessary closure of their enterprise, restrictions of meetings and/or curtailment of travel. The scope of eligible sectors has been extended several times since the establishment of the scheme on 27 March 2020. There is no data available yet on the use of the scheme.

In addition to these measures, the government will provide EUR 300 million for the cultural and creative sector. These funds will be provided via the existing subsidies for the sector and is aimed at institutions, not individual workers. By supporting such institutions, they can contract individuals again. This announcement was made on 15 April 2020 and at the moment, it is not clear when the additional support will be effectuated.

1.2.4 Health and safety

At the request of specific sectors, the Secretary of State of Social Affairs and Employment has exempted some demands within the Health and Safety Act regarding certificates that are necessary to execute certain tasks (Decree of 8 April 2020, Stcrt. 2020, 21417). These exemptions are valid until 31 August 2020, and mainly concern renewals of certificates for pyrotechnicians, asbestos removal specialists, diving work and specialists that track explosive remnants of war. Due to the COVID-19 measures, the timely examination necessary for certificate renewals is not possible.

2 Court Rulings

2.1 Employer insolvency

Dutch Supreme Court, ECLI:NL:HR:2020:753 (Heiploeg), 17 April 2020

This [case](#) concerned a relaunch of a company after insolvency in the context of a pre-packaged insolvency sale ('pre-pack'). The question was whether the protection of workers in case of a transfer of undertaking, guaranteed by Articles 3 and 4 of the Directive 2001/23/EC, applies or that the situation can be brought under Article 5 (1) of said Directive. Article 5 (1) Directive 2001/23/EC states that the protection scheme referred to in Articles 3 and 4 of the Directive does not apply to transfers of undertakings carried out under the circumstances specified within that provision, unless Member States provide otherwise. The circumstances specified are, in short, a situation of bankruptcy. In order to fall within the scope of Article 5 (1), the transferor must be the subject of bankruptcy proceedings or any analogous insolvency proceedings. Furthermore, those proceedings must have been instituted with a view to the liquidation of the assets of the transferor and be under the supervision of a competent public authority. The Netherlands has used the possibility offered by Article 5(1) of the Directive to exclude a bankruptcy situation from the general protective rules in case of a transfer of undertaking.

Heiploeg Group was an international wholesale company in the fishing industry and suffered considerable losses. When in addition, four of the group companies were fined by the European Union because of cartelisation, the banks refused to provide funding. Bankruptcy was unavoidable and the group investigated whether it was possible to restart the company as part of the bankruptcy proceedings. One out of three interested parties was chosen to negotiate the relaunch with the prospective insolvency administrator. The purpose of the negotiations was, according to the prospective

insolvency administrator, liquidation of the assets and the selling of assets in the interest of the creditors. After declaring bankruptcy, an agreement was reached between the insolvency administrator and the buyer, and the relaunch became a reality: Heiploeg Group New was listed in the Commercial Register.

Two Dutch trade unions (FNV and CNV) initiated proceedings requesting a declaratory decision that the employees of the Heiploeg Group be transferred to Heiploeg Group New by means of a transfer of undertaking as described in Article 7:662 et seq Dutch Civil Code (implementing Directive 2001/23/EC).

The Court of Appeal first deferred the case to await the decision of the ECJ in the *Smallsteps* case (CJEU, C-126-16, [ECLI:EU:C:2017:489](#) (*Smallsteps*), 22 June 2017) that addresses this specific point. After the *Smallsteps* decision was rendered, the Court of Appeal ruled that in the *Heiploeg* case, all criteria of Article 5 (1) of the Directive had been met and that the employees could therefore not rely on the protection of Articles 3 and 4 of the Directive (as implemented in Article 7:666 Dutch Civil Code).

The trade unions appealed to the Supreme Court which decided on 17 April 2020 to ask the ECJ for a preliminary ruling. The parties have been granted a four-week delay to comment on the questions.

In the *Smallsteps* case, the ECJ has ruled that the protection of workers guaranteed by Articles 3 and 4 of that Directive applies (and the exception of Article 5 (1) is not applicable), if the transfer of undertaking takes place following a declaration of insolvency and in the context of a 'pre-pack', where that 'pre-pack' is prepared before the declaration of insolvency and put into effect immediately after that declaration, and, in particular, if a court-appointed prospective insolvency administrator investigates the possibilities for continuation of the activities of that undertaking by a third party and prepares for acts which must be carried out shortly after the insolvency to enable such continuation. Moreover, the ECJ ruled that it is irrelevant in that regard that the 'pre-pack' was also aimed at maximising the proceeds of the transfer for all creditors of the undertaking in question.

According to the Dutch Supreme Court, the *Heiploeg* case is different from the *Smallsteps* case because in the latter case, the negotiations on the relaunch were held with companies associated with the former company. This was not the case in *Heiploeg*. The Supreme Court furthermore emphasised that in the *Smallsteps* case, the Dutch bankruptcy proceedings and the purpose and structure of the pre-pack procedure had not been presented to the ECJ to its fullest extent. More specifically, the Supreme Court stated that it was not clear whether the ECJ's assessment of the criteria for applying Article 5 (1) was also valid for a case such as the *Heiploeg* case. This evolved mainly around the criteria that (i) the proceedings must have been instituted with a view to the liquidation of the transferor's assets and (ii) be under the supervision of a competent public authority.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Norway

Summary

A number of legislative changes to mitigate the effects of the COVID-19 outbreak have been introduced.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Overview

On its web page, the government provides a [collection of all regulations](#) that have been enacted under the framework of the Corona Act.

The Act on Law on Amendments to the Layoff Wage Act is available [here](#).

1.1.2 Individual measures

The government has introduced an [aid package of NOK 190 000 000](#) to secure access to various education/further education measures to employees and their employers who have been hit by the crisis.

The government introduced an [aid package of financial aid to professions and small businesses hit by the COVID-19 crisis](#).

The Ministry of Finance announced that [enterprises may apply for loss of revenue during March, April and May due to COVID-19 and based on their revenues in January and February 2020](#). The requirement is that the reduction of revenues amounts to a minimum of 30 per cent due to COVID-19. The amount of compensation depends on how much the drop in revenues is, the size of the enterprise, its regular costs and whether or not the enterprise was forced to shut down based on the decree of the government.

Parliament [enacted an aid package of NOK one billion in financial support to students who have lost their part-time jobs due to COVID-19](#).

The government introduced a [financial aid package for small companies and freelancers to compensate the loss of revenues due to COVID-19](#).

The government has decided to [gradually open kindergartens and schools](#). The opening starts on 20 April for kindergartens and grades 1- 4 in schools, and after-school care from 27 April. The opening will take place gradually and controlled, with adherence to the crucial rules of hygienic care. [Universities and colleges may open for a small group of students and employees from 27 April](#).

The government introduced a [package of measures to ensure that apprentices can take their final exams without undue delay because of the COVID-19 crisis](#). About 4 000 apprentices in vocational professions have been furloughed.

Parliament enacted [special rules to extend the period employees receive their full salary to 18 days before being paid the regular rate for furloughed employees](#). This regular rate for employees who have been furloughed equals the regular unemployment benefit of 62.4 per cent of salary and limited to 6G (approximately NOK 600 000).

The government presented the [aid package to enterprises, which was announced on 27 March, on 16 April 2020](#). The package is about NOK 5 billion, with one part targeting new entrepreneurs and young businesses.



The government enacted [temporary provisions in the Pension Act](#), providing for the right of furlough employees to remain members of the pension system. Additional information on the application process is available [here](#).

The [Research Council of Norway](#) announced [NOK 1.5 billion in funds to research and development of enterprises](#) half a year earlier than originally planned as a stimulus effort due to the COVID-19 crisis.

The [four main associations on the side of the employees and employers and the State](#) have agreed to [extend the 16 March Agreement](#), which provides some room for increased flexibility for working time adaptations until 31 May 2020. In addition, the temporary rule on core working time has been suspended until 15 September.

1.1.3 Proposals

The government proposes [amendments to the Labour Dispute Act](#).

The government has [proposed changes to the national Insurance Act](#) to encourage more efficient and speedy decision making of applications due to the COVID-19 crisis.

Further information on this government proposal is available [here](#).

The government proposed [amendments to the bankruptcy legislation](#) to aid enterprises who are facing an acute financial crisis due to COVID-19.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

4.1 Unemployment

The National Labour Inspection reports that there is currently [421 000 unemployed job-seekers](#).

4.2 Appointment of COVID-19 Commission

On 24 April 2020, the government appointed an independent commission to evaluate the actions and lessons learnt from the COVID-19 pandemic in Norway. The leader of the Commission is Professor Emeritus Stener Kvinnsland. Eleven other members are from various professional backgrounds. The Commission is to deliver its report by the end of March 2021.

Poland

Summary

(I) The 'anti-crisis shield 2.0.' package supplements measures to prevent, countervail and fight COVID-19 and entails various public subsidies, work stoppage benefits, working time and rules on the termination of employment.

(II) A ban to carry out additional occupational activities has been introduced.

(III) A draft law would again modify the recently introduced amendments on the composition of the Social Dialogue Council.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Amendments to the 'anti-crisis shield'

Legal solutions intended to mitigate the economic crisis caused by the coronavirus epidemic have been introduced by the [Law of 02 March 2020 on particular measures to prevent, countervail and fight COVID-19, other infectious diseases and crisis situations caused by them](#) (*Ustawa o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych*). This law took effect on 08 March 2020 (Journal of Laws 2020, item 374), as amended by the Law of 31 March.

The abovementioned regulations are described as the 'anti-crisis shield' package. These regulations were reported on and analysed in the March Flash Report.

In April, additional anti-crisis measures were enacted to improve the provisions of the abovementioned Law of 02 March 2020. The amendments were introduced by the [Law of 16 April 2020 on particular support measures connected to the spread of SARS-CoV-2 virus](#) (*Ustawa o szczególnych instrumentach wsparcia w związku z rozprzestrzenianiem się wirusa SARS-CoV-2*), Journal of Laws 2020, item 695. The Law took effect on 18 April 2020.

Sources:

Information on the legislative process is available [here](#).

Information provided by the Ministry of Family, Labour and Social Affairs is available [here](#).

The abovementioned Law of 16 April amended the original Law of 02 March 2020, including labour law issues. These regulations are referred to as the 'genuine anti-crisis shield' or 'anti-crisis shield 2.0.' The anti-crisis measures are still under discussion, and the next legislative initiatives can be expected in the near future.

1.1.2 The 'anti-crisis shield 2.0.' measures

a. Public subsidies to finance employee remuneration for the period of economic work stoppage or reductions in working time

Article 15g of the original law has been modified (see the March 2020 Flash Report, section 1.1.1 d. for an analysis of the regulations). This provision granted entrepreneurs financial subsidies to cover part of their employees' remuneration in two situations, namely in case of economic work stoppage or reductions in working time. Financial

assistance could be granted to those entrepreneurs experiencing reductions in economic turnover as a result of the COVID-19 crisis.

The scope of application of this regulation has been widened. In addition to entrepreneurs, the subsidies can also be granted to entities that function under the [Law of 24 April 2003 on public benefit activity and volunteering](#) (*Ustawa o działalności pożytku publicznego i o wolontariacie*), consolidated text: Journal of Laws 2019, item 688, with further amendments.

Therefore, the public subsidies in case of work stoppage or reductions in working time can be granted not only to entrepreneurs, but also to non-governmental organisations making use of volunteer work.

b. Working time in critical infrastructure facilities

Article 15x of the original law has been modified (for an analysis of the original regulations, see March 2020 Flash Report, section 1.1.1 f.). The provision introduces special regulations on working time in critical infrastructure facilities, i.e. entities that are essential for the maintenance of crucial societal functions, health, safety, security, etc.

According to the amendment, the scope of changes to working time schedules that can be introduced by the employer in such companies has been broadened.

Moreover, such employers have been granted new competences with regard to determining working time. Under the new Article 15x item 1 section 3 of the Law, the employer can require an employee to be ready to perform work at the workplace or another location designated by the employer. In such a situation, Article 151² § 2 of the [Labour Code](#) (26 June 1974, consolidated text Journal of Laws 2019, item 1040; hereinafter: LC) does not apply.

Under the new Article 15x item 1 section 3 of the Law, the employer can instruct the employee to use his/her right to rest in a location determined by the employer.

Article 151² LC, mentioned in the anti-crisis shield 2.0, refers to on-call time. Under § 1 LC, an employer may require an employee to remain at his/her disposal outside of the regular working hours to perform work determined in the contract of employment in the establishment or in any other place specified by the employer. According to § 2, on-call time is not included in working time if no work is performed during that time. The time of on-call duty cannot violate the employee's right to rest referred to in Articles 132 and 133 LC (i.e. daily and weekly uninterrupted rest).

c. Work stoppage benefit

Article 15zq introduced the work stoppage benefit for some employees who perform work outside an employment contract, i.e. some civil law contractors and self-employed persons (the original regulations on this matter are discussed in the March 2020 Flash Report, section 1.1.1 h.).

The scope of the right to work stoppage benefit has been broadened. Under the original regulations, it could only be paid once. According to the amendment, it can be paid three times. As far as self-employed persons are concerned, the condition to earn an income of less than 300 per cent of one's average remuneration has been abolished. Those civil law contractors who concluded contracts before 01 April 2020 can apply for the benefit (previously, only those individuals who had concluded a contract before 01 February 2020 were eligible).

d. Financial subsidies for entrepreneurs

Article 15zzzb of the Law introduced the grounds for granting financial subsidies to small entrepreneurs to cover part of workers' remuneration, as well as social security contributions (for an analysis of the original regulations, see also March 2020 Flash Report, section 1.1.1 i.).

According to the original regulations, the right to subsidies was basically restricted to small and medium enterprises. This condition has been abolished, i.e. large enterprises can also apply for subsidies.

The original regulations (Article 15 zzb item 8) also stated that the entrepreneur was required to retain the level of employment for the period during which the subsidies were being provided and for an equivalent period thereafter. The amendment shortens this period. The entrepreneur is required to retain the level of employment only for the period during which the public subsidies are being provided.

e. Possibility to terminate the employment relationship or reduce remuneration in the public sector

The new Articles 15zzzzzo – 15zzzzzx of the Law concern the possibilities to reduce the number of employees or to modify the employment conditions in the public sector. In case of serious threat to public finances due to the COVID-19 epidemic, the Council of Ministers (i.e. the Cabinet) can issue an ordinance on measures to reduce the costs of employment. These measures can impose the obligation on particular institutions to diminish the level of employment, or to weaken employment conditions (Article 15zzzzzo of the Law). This amendment may affect employees in the administration on central and regional level and entities controlled by them (Article 15zzzzzp of the Law).

Under the anti-crisis shield, the reduction of the level of employment can be achieved by:

- terminating employment relationships (by the employer), including those employees who have reached the right to an old-age or invalidity pension;
- not concluding further employment contracts, when a probation contract or a fixed-term contract has expired or
- reducing the amount of working time and, accordingly, the level of remuneration.

In case an employment contract is terminated by the employer, the Law of 13 March 2003 on specific rules of terminating employment relationships with employees for reasons not related to the employee (consolidated text: Journal of Laws 2018, item 1969), does not apply (Article 15zzzzzq of the Law).

In other words, the so-called Law on Collective Redundancies does not apply to dismissals in the public sector due to the COVID-19 crisis. The Law on Collective Dismissals is available [here](#).

Under the 'anti-crisis shield', the relevant measures are to be undertaken by a person who has been designated by the employer and is entitled to take legal actions in the field of labour law. This individual must elaborate the criteria for selecting employees to be made redundant. The primary criteria, which must be objective and non-discriminatory, can refer in particular to: professional qualifications, the employee's capabilities and experience, previous course of employment, the employee's usefulness or availability to secure the functioning of the entity. The secondary criteria can include the employee's personal and family situation, in particular single parents, sole breadwinner in the family, or disability. The individual in charge should inform the trade unions about the number of planned dismissals and the criteria based on which the employees were selected. Trade unions may express their opinion within 7 days. If there

is no trade union at the given employer, the information should be provided to elected employee representatives. Moreover, Article 38 of the Labour Code, which refers to the consultation of the trade union in case of an intention to terminate an open-ended employment contract does not apply. It would also be admissible to dismiss an employee during leave granted for a period of at least 3 months (Article 15zzzzzr).

Reduction of the level of employment as such constitutes a valid reason for dismissal or a decrease in the employee's working time. The termination of an employment contract is admissible not earlier than 14 days after the trade union has been informed about the planned dismissal (Article 15zzzzzs of the Law). The dismissed employee is entitled to severance pay, which is based on his/her period of employment (Article 15zzzzzt of the Law).

The employer's actions can also include other measures, i.a. suspending certain employee rights, like additional holiday leave, or entitlement to some components of remuneration. If the employee does not accept the modifications, it is deemed that s/he has terminated the employment contract (Article 15zzzzzu of the Law). For the period determined in the Ordinance, it will be mandatory to keep a reduced level of employment (Article 15zzzzzw of the Law). Therefore, in practice, no new employees would be hired in the public sector.

1.1.3 Ban to carry out additional activities by some medical staff members

The ban to carry out additional occupational activities has been introduced for those individuals who are involved in medical professions and have immediate contact with coronavirus patients, or who are exposed to a serious risk of such contacts.

The legal basis for this action is the Minister of Health's Ordinance of 28 April 2020 on restrictions to provide health care services to patients other than those affected by the SARS-CoV-2 virus by individuals who are involved in medical professions and have immediate contact with patients afflicted with the virus ([Rozporządzenie Ministra Zdrowia z dnia 28 kwietnia 2020 r. w sprawie standardów w zakresie ograniczeń przy udzielaniu świadczeń opieki zdrowotnej pacjentom innym niż z podejrzeniem lub zakażeniem wirusem SARS-CoV-2 przez osoby wykonujące zawód medyczny mające bezpośredni kontakt z pacjentami z podejrzeniem lub zakażeniem tym wirusem](#)), Journal of Laws 2020, item 775. The Ordinance took effect on 30 April 2020.

According to the Ordinance, the manager of a medical entity that provides medical assistance to persons infected with the coronavirus should create a list of health care staff that are in immediate contact with coronavirus patients, or with patients that are exposed to coronavirus. These medical staff members are not allowed to provide medical assistance to any other patients. The manager must inform the members of the medical staff that this restriction applies to them and the period for which this restriction will remain in force.

If this restriction applies to a medical staff member, the employer other than a medical entity that employs such an individual, should grant him/her, upon a request, unpaid leave for the required period. The information on the application of such restriction also constitutes a basis for interrupting any other health care activities outside the medical entity that employs that particular medical staff member.

Thus, in practice, medical staff members who are in immediate contact with coronavirus patients, or who are exposed to a serious risk of infection, are not allowed to carry out any other medical activities. This ban concerns both taking up or continuing employment in another medical entity, or performing medical activities within the scope of self-employment.

1.1.4 Composition of the Social Dialogue Council

Another [draft](#) submitted in April refers to the composition of the Social Dialogue Councils. Its functioning is subject to the [Law of 24 July 2015 on Social Dialogue Council](#) (consolidated text: Journal of Laws 2018, item 2232).

The anti-crisis law of 31 March 2020 introduced an amendment to the abovementioned law. The new Article 27 item 2a gives the Prime Minister the right to dismiss a member of the Social Dialogue Council in case of a loss of trust in him/her, as a result of (1) information on work or collaboration with state security services in the period 1944–1990; or (2) betrayal of the Council's activities that would lead to a lack of clear, essential and regular dialogue of organisations of employees and employers and the government. The new Article 27 item 2b provides that the membership of the Council expires in case a false statement on the lack of cooperation with state security services in the years 1944–1990 is submitted, as determined by a court judgment. In practice, the Prime Minister can dismiss any member of the Council appointed by a trade union or employers' organisation (as discussed in the March 2020 Flash Report, section 1.1.1 j.).

The abovementioned provision is subject to another legislative proposal. On 02 April 2020, a group of deputies submitted the draft of the amendment to the original anti-crisis shield (i.e. the Law of 02 March 2020). The idea behind the amendment is to repeal the abovementioned Article 27 item 2a and 27 item 2b of the Law on Social Dialogue Council, and to restore the previous legal regulations on the composition of the Social Dialogue Council.

Information on the legislative process is available [here](#).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Portugal

Summary

- (i) The state of emergency has been repeatedly extended and will now cover the entire national territory until 17 May 2020.
- (ii) Amendments have been made to some of the measures referred to in the Flash Report of March 2020 (financial support, working time, etc.).
- (iii) A Decree Law reinforces the protection of workers performing public functions in case of need for family assistance.
- (iv) A Ministerial Ordinance regulates the proceedings to the attribution of several support measures in the context of the COVID-19 pandemic.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Renewal of the declaration of the State of Emergency

The state of emergency, which was initially declared in Portugal on 18 March 2020 by Decree of the President of the Republic No. 14-A/2020, was renewed for two additional periods of 15 days on 2 April 2020 by [Decree of the President of the Republic No. 17-A/2020](#), and subsequently on 17 April 2020, by the [Decree of the President of the Republic No. 20-A/2020](#), in response to the disaster situation caused by the COVID-19 pandemic (for more detailed information on the legal framework of the state of emergency, please refer to the Flash Report of March 2020).

In the first and second renewals, the state of emergency continues to cover the entire national territory and entails exceptional measures in response to the health and public health emergency Portugal is facing.

The specific measures related to the extension of the state of emergency were introduced by the government by the [Decree of the Council of Ministers No. 2-B/2020](#), of 2 April on the first renewal, and the [Decree of the Council of Ministers No. 2-C/2020](#), of 17 April on the second renewal.

We summarise the restrictions and rules applicable during the first and second renewals of the state of emergency in Portugal below.

- **First renewal**

Decree of the President of the Republic No. 17-A/2020, of 2 April, sets out the following:

- a) The first renewal of the state of emergency had a duration of 15 days, starting at 00:00 on 3 April 2020 and ending at 23:59 on 17 April 2020;
- b) It implied the partial suspension of certain rights, freedoms and guarantees, with special emphasis on the following:
 - (i) Right of movement and settlement in any part of the national territory – possibility to adopt compulsory confinement, the establishment of sanitary fences and the prohibition of unjustified movement and stay on the public highway;
 - (ii) Right of ownership and private economic initiative – possible requisition order of services and use of movable and immovable property, mandatory opening, operation and functioning of companies and establishments or, on the

contrary, their closure or limitations of activity (e.g. limitation of dismissals, changes to quantities, prices and nature of the goods);

- (iii) Worker's rights – the possibility to require services from workers of public or private entities, regardless of the place, time and other conditions of their employment, in the areas of health, civil protection, security and defence, treatment of patients, prevention and fight against the spread of the epidemic, as well as those necessary for the production, distribution and supply of essential goods and services, for the functioning of sectors crucial to the economy and for the operation of the necessary infrastructures; possibility to extend and simplify the temporary reduction of the working time or suspension of the employment contracts; suspension of the rights of the works councils, trade unions and employers' associations to participate in the drafting of labour legislation; suspension of the right to strike insofar as the strike may jeopardise the functioning of crucial infrastructure, such as health and the supply of goods and services essential to the population;
- (iv) Right to international movement – with the introduction of border controls on persons and goods, without prejudice of measures necessary for the international movement of essential goods and services;
- (v) Right of assembly and demonstration – measures may be imposed to limit or prohibit meetings or demonstrations that enhance the transmission of the virus.

With the entry into force on 3 April 2020, Decree of the Council of Ministers No. 2-B/2020, of 2 April, establishes the terms of the exceptional measures to be implemented during the period of the first renewal of the state of emergency, the following being those we consider more relevant:

- (i) Patients infected with the COVID-19 virus, as well as citizens under active surveillance by the health authorities, are subject to mandatory confinement under penalty of a crime of disobedience;
- (ii) All other citizens (with the exception of those over 70 years of age, those immuno-compromised and those suffering from a chronic illness, to whom a special duty of protection applies) are subject to a general duty of home isolation, and may only move in public spaces and streets, or similar, for specific purposes, the following of which stand out:
 - Purchase of goods and services;
 - Travel for the purpose of performing professional activities or similar;
 - Travel for reasons of health;
 - Job search or reply to a job offer;
 - Travel to post offices, bank branches and insurance brokers or insurance companies;
 - Return to personal home;
 - Other activities of a similar nature or for other reasons of force majeure or imperative need, provided they are duly justified;
 - Private vehicles may travel on public roads to carry out all of the above activities or to refuel at gas stations.
- (iii) Specific limitation to movement during the Easter period (in this period, as a rule, movement outside the municipality of the habitual residence is prohibited);
- (iv) Obligation of all employers to adopt remote working from home, where compatible with the worker's functions;

- (v) Obligation to close facilities and establishments referred to in Annex I of the Decree;
- (vi) Obligation to suspend all retail trade activities, with the exception of those providing basic necessities or other goods considered essential in the present circumstances, which are listed in Annex II of the Decree;
- (vii) An exception is also made for establishments that maintain their activity solely for the purpose of home delivery or making goods available at the door of the establishment or at the gate, with a prohibition of access to the interior of the premises;
- (viii) Non-suspension of wholesale establishments;
- (ix) Mandatory suspension of service activities in establishments open to the public, except those listed in Annex II of the Decree;
- (x) Closure of premises and establishments determined by this legal framework does not constitute a basis for terminating non-residential rental contracts or other forms of exploitation of property;
- (xi) There is no obligation of suspension for the following services or activities:
 - catering in canteens or cafeterias in regular operation and other collective catering units in operation under a contract of continuous performance;
 - restaurants and similar establishments that cook exclusively for off premises consumption or for home delivery;
 - e-commerce or service activities that are provided remotely, without contact with the public or provided through an electronic platform;
 - retail trade or service activities located along the highway network and inside airports and hospitals;
- (xii) The possibility of adapting the above mentioned measures and the opening of establishments referred to in the Annex may be determined; allowing other retail trade activities or the provision of services, including catering, in addition to those provided for in Annex II; or, on the contrary, limiting or suspending the exercise of the activities provided for in Annex II, if they are dispensable or undesirable in the context of fighting the contagion;
- (xiii) Small retail establishments and those that provide local services may exceptionally apply before the local civil protection authority for permission to function, upon reasoned request;
- (xiv) Retail trade establishments or those providing services that maintain their activity shall comply with the following safety and hygiene rules:
 - In physical establishments, ensure a minimum distance of two metres between people, a stay for as long as strictly necessary and the prohibition of consumption inside the establishment, without prejudice to the rules laid down in Order No. 71-A/2020 of 15 March;
 - The service must be provided, and the products transported, in compliance with the necessary hygiene and health rules laid down by the Directorate-General for Health.
- (xv) Reinforcement of the powers of the authority of the labour conditions (“*Autoridade para as Condições do Trabalho*”): during the term of this Decree, in order to protect the rights and guarantees of the workers, whenever the labour inspector verifies the existence of evidence of unlawful dismissal, s/he should draw up a report and notify the employer to rectify the situation. With such notification and until the regularisation of the situation or a final decision of the

court, the employer cannot terminate the employment contract of the employee, who maintains all rights, namely the right to remuneration.

- (xvi) The temporary and exceptional suspension of the possibility of terminating employment agreements with workers belonging to the health sector, who perform their activity in facilities and establishments incorporated in the National Health Service.

● **Second renewal**

Decree of the President of the Republic No. 20-A/2020, of 17 April, sets out that the second renewal of the state of emergency has a duration of 15 days, starting at 00:00 on 18 April 2020 and ending at 23:59 on 2 May 2020.

This Decree upholds the partial suspension of the same rights, freedoms and guarantees referred to in the Decree of the President of the Republic No. 17-A/2020, of 2 April, on the first renewal of the state of emergency (described above).

Decree of the Council of Ministers No. 2-C/2020, of 17 April, executes the second renewal of the state of emergency and essentially upholds the exceptional measures already established in the Decree of the Council of Ministers No. 2-B/2020, of 2 April, on the first renewal of the state of emergency (above described).

This Decree entered into force on 18 April 2020.

1.1.2 Declaration of a disaster situation

On 30 April 2020, the Council of Ministers adopted [Resolution No. 33-A/2020](#) which, after terminating the second renewal of the state of emergency, proceeds to declare a disaster situation due to the epidemiological situation of COVID-19 in the entire national territory, starting at 00:00 on 3 May 2020 and ending at 29:59 on 17 May 2020, without prejudice to the extension or modification of this measure if the development of the epidemiological situation justifies it.

This Decree establishes temporary and exceptional measures to be implemented in the context of the declaration of the disaster situation in the entire national territory, of which we highlight the following:

- (i) Patients infected with COVID-19, as well as citizens under active surveillance by the health authorities, are subject to mandatory confinement;
- (ii) Other citizens are subject to a civic duty of home isolation: they should refrain from moving in public spaces and streets, and remain in their homes, except for travels authorised by this Decree (for instance, travels to purchase goods and services or to perform professional activities or similar, travels for health reasons, for job searches or to reply to a job offer, to accompany minors, etc. Please note that the scope of the authorised travels envisaged in this Decree—which applies during the disaster situation—is broader than the one that applied during the state of emergency).
- (iii) It upholds the general obligation to perform remote work, where feasible;
- (iv) The suspension of retail trade activities and of the provision of services, with an area that does not exceed 200 square meters, and of other activities, namely rendered in bookstores, hair salons and beauty centres (with prior appointment) ceases;
- (v) It is established that specific rules on the occupation, stay and physical distance on the above referred facilities continue to apply.

1.1.3. Temporary and exceptional measures with an impact on labour law

Decree Law No. 12-A/2020, of 6 April (a brief summary can be found [here](#)) introduces some amendments to Decree Law No. 10-A/2020, of 13 March (mentioned in the Flash Report of March 2020), which established several exceptional and temporary measures related to COVID-19. The following amendments to the above mentioned Decree are noteworthy:

- (i) Suspension of the limits applicable to overtime work in accordance with the legal framework applicable to civil servants ("*Lei Geral do Trabalho em Funções Públicas*") and the Labour Code on all services and entities of the Ministry of Health, security forces and services, some authorities and institutes and institutions related with social economy, performing essential functions in social and health sectors (Article 6);
- (ii) Excluding periods of school vacation, absence from work is deemed to be justified without a loss of rights, with the exception of those relating to remuneration, if the worker needs to take care of (i) children or other dependents aged under 12 years or (ii) regardless of age, that have a disability or chronic illness due to the suspension of academic and non-academic activities of schools, if they are unable to work remotely (Article 22);
- (iii) Special rules applicable to the financial support given to domestic workers for family assistance (Article 23 (8));
- (iv) Definition that the financial support provided to self-employed workers in case of reduction of economic activity consists of i) the amount of the remuneration considered for the purposes of the calculation of social security contributions, with a maximum limit of the social support index ("IAS"), which corresponds to EUR 438,81, in case the referred remuneration is lower than 1.5 IAS (i.e., EUR 658,22) or ii) 2/3 of the amount of the remuneration considered for the purposes of the calculation of social security contributions, with the maximum limit of the national minimum wage (i.e. EUR 635) in case the referred remuneration is equal or higher than 1.5 IAS (i.e. EUR 658,22) (Article 26 (3));
- (v) Application of the financial support provided to self-employed workers in case of reduction of economic activity, to corporate bodies of companies with no dependent workers, provided that their invoices in the previous year do not exceed EUR 60 000 (Article 26 (6));
- (vi) The approval and posting of the vacation schedule can be made up to 10 days after the end of the state of emergency (instead of until 15 April, as set forth in the law) (Article 32-A).

This Decree entered into force on 7 April 2020.

Decree Law No. 14-D/2020, of 13 April, reinforces the protection of parents in case of workers performing public functions and who are covered by the converging social protection scheme ("*regime de Protecção social convergente*") (a brief summary can be found [here](#)).

Specifically, this Decree Law establishes that the daily amount for assistance to workers' children is, from now on, equal to 100 per cent of the reference remuneration (instead of 65 per cent).

These regulations took effect on 1 April 2020.

Decree Law No. 14-F/2020, of 13 April, introduces amendments to Decree Law No. 10-A/2020, of 13 March and Decree Law No. 10-G/2020, of 26 March (both mentioned in the Flash Report of March 2020), namely on the following matters:

- (i) Calculation of the support applicable to self-employed workers (i.e. financial support and the possibility of deferring the payment of social security contributions);
- (ii) In case of a “simplified lay-off”, it is established that if the worker engages in other remunerated activity outside the company during the reduction or suspension period and such activity is carried out in the areas of social support, health, food production, logistics and distribution, his/her retributive compensation (“*compensação retributiva*”) will not be reduced accordingly (which is an exception to the general rule).

This Decree entered into force on 14 April 2020.

Ministerial Ordinance No. 94-A/2020, of 16 April, regulates the proceedings on the attribution of the support related to (i) absence from work due to closure of schools; (ii) reduction of economic activity of self-employed workers; (iii) measures to retain job positions and the mitigation of business crisis situations; (iv) payment of social security obligations in the context of the COVID-19 pandemic.

Specifically, this Decree stipulates (i) the relevant amounts for the calculation of the above referred support; (ii) the payment methods of the above mentioned support; and (iii) the obligation of keep all relevant information for three years, which enables the companies to verify fulfilment of the requirements for the attribution of such support in case of inspection.

This Decree took effect *i)* on 3 March 2020 (in relation to the proceedings applicable to the absence from work due to the closure of schools and in cases of financial support applicable to self-employed workers), *ii)* on 12 March 2020 (in relation to the proceedings applicable to the payment of social security obligations, in the context of the COVID-19 pandemic), and *iii)* on 27 March 2020 (in relation to the support for job retention and the mitigation of business crisis situations).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Romania

Summary

The extension of the state of emergency has led to a continuation of the exceptional measures applicable to labour relationships.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Extension of the state of emergency

In Romania, the state of emergency, initially established on 16 March, was extended by [Decree No. 240/2020](#) on the extension of the state of emergency on the Romanian territory, published in the Official Gazette No. 311 of 14 April 2020. The state of emergency is expected to end on 15 May 2020.

The decree contains a series of measures relevant to labour relationships, derogating from the general rules, such as:

- Extension of the provisions on the right to leave days for employed parents, during the period when nurseries, kindergartens and schools are closed;
- Rules on the delegation and (temporary) assignment of workers in the essential services. In addition, special rules on the delegation and (temporary) assignment of medical staff are also provided in [Order No. 643/472/2020](#) on the approval of the method of payment and timekeeping for staff seconded or assigned from public health units during the state of emergency, published in the Official Gazette No. 327 of 22 April 2020;
- Suspension of notice periods, in case of resignation of medical staff. If a member of the medical staff chooses to cease his/her activity, it will be considered a disciplinary offense, likely to lead to a disciplinary dismissal;
- The possibility for employers in the public sector to unilaterally decide the cessation or, conversely, the beginning of the employee's annual rest leave, as well as the right of the employer to order the interruption of unpaid leave, or of study and training leave of employees and the resumption of work.

1.1.2 Technical unemployment

If no longer working as a result of the pandemic, certain categories of workers receive an indemnity of 75 per cent of their salary, paid from the unemployment insurance budget, but not more than 75 per cent of the national average gross wage. Among the beneficiaries are employees, but also some self-employed or freelancers, authors and athletes. [Emergency Ordinance No. 53/2020](#) added lawyers.

According to the same regulation, for the amendment and completion of normative acts involving social protection measures associated with the containment of the SARS-CoV-2 coronavirus, published in the Official Gazette No. 325 of 21 April 2020, the amounts paid for the periods of technical unemployment cannot be subject to enforcement by attachment. This measure shall end 60 days after the end of the state of emergency.

1.2 Other legislative developments

Nothing to report.



2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovakia

Summary

The new government appointed by the President of the Republic on 21 March 2020, discussed and proposed the adoption of amendments of several acts, including the Labour Code, Social Insurance Act, Safety and Health Act, and the Employment Services Act. The government has also approved several decrees and resolutions in connection with COVID-19.

National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Government subsidies

One of the first forms of support approved by the new government of the Slovak Republic to mitigate the economic impacts of the crisis was the provision of support to retain jobs. On 31 March 2020, the government approved the Draft of the Terms and Conditions to support the maintenance of employment in the event of a declared extraordinary situation, state of emergency or in an exceptional state and the elimination of its consequences.

Employers and self-employed persons who, at the time the state of emergency was declared, are entitled to the contribution on the basis of the Measures of the Public Health Office of the Slovak Republic if they:

- had to *interrupt or reduce* their activities (**Group 1**),
- **did not have the obligation** to interrupt or reduce their activities, but had a **decrease in sales of at least 20 per cent (Group 2)**.

The eligible period for the contribution starts on the date of the decision of the Public Health Office to close or restrict operations (12 March 2020) until the end of the calendar month in which the decision of the Public Health Office is revoked. Since 6 April 2020, the Offices of Labour, Social Affairs and Families have received applications for contributions to the wages of employees from employers who had to close down or reduce their operations. Since April 8, self-employed persons have also been able to apply for assistance.

Group 1

Employers and self-employed persons, who are employers and who have had to close down or reduce their operations, can apply for a contribution to the wage of employees in the amount **of 80 per cent of their average earnings, up to a maximum of EUR 1 100**. The condition is for the job to be retained, even after the end of the crisis period. The contribution to the employees' wages is provided for employees to whom the employer or self-employed person cannot assign work because of an obstacle on the part of the employer (Article 142 of the Labour Code).

Group 2

The amount of contribution in April 2020 available to employers for Group 2 employees will be a **maximum of 80 per cent of the employees' average earnings, and a maximum of:**

- 180 EUR with a decrease in sales of 20% and more,
- 300 EUR with a decrease in sales of 40% and more,
- 420 EUR with a decrease in sales of 60% and more,

- 540 EUR with a decrease in sales of 80% and more.

For March 2020

- 90 EUR with a decrease in sales of 20% and more,
- 150 EUR with a decrease in sales of 40% and more,
- 210 EUR with a decrease in sales of 60% and more,
- 270 EUR with a decrease in sales of 80% and more.)

1.1.2 Temporary amendments of labour law

On 2 April 2020, the National Council of the Slovak Republic (Parliament) approved a government proposal of the Act Amending the Labour Code and Several Other Acts – Act No. 66/2020 Collection of Laws (“Coll.”) supplementing Act No. 311/2001 Coll. Labour Code, as amended, and supplementing certain acts.

According to Article I of this Act, the Labour Code is amended. In the interest of job retention, the possibility of a more flexible response by the employer to the dynamic changes that affect the organisation of work and to protect employees, some adjustments were adopted on working time, paid leave and obstacles to work.

After the tenth part (of the Labour Code), the following eleventh part has been inserted, which reads as follows:

Part Eleven: Special provisions for extraordinary situations, states of emergency or exceptional states

Article 250b

1) During an extraordinary situation, a state of emergency or an exceptional state and within two months after these have ceased, the provisions of the first part to the tenth part (of the Labour Code) shall apply with the **derogations specified in paragraphs 2 to 7.**

2) During the effectiveness of a measure to prevent the occurrence and spread of communicable diseases or of a measure in the event of a threat to public health ordered by the competent authority pursuant to a special regulation

a) the employer is entitled to order the employee to perform his/her work from home, if the agreed type of work allows for it,

b) the employee has the right to perform work from home, if the agreed type of work allows for it and if there are no serious operational reasons on the part of the employer, which do not allow for the performance of work remotely.

3) The employer is required to notify the employee of the working hours schedule at least two days in advance, unless s/he agrees on a shorter period with the employee; the schedule is valid for at least one week.

4) The employer is required to notify the employee of the use of paid leave at least seven days in advance, and in the case of unused leave according to Article 113 paragraph 2, at least two days in advance. This period may be shortened with the employee’s consent.

5) The employer shall justify the absence of an employee from work even when s/he is incapacitated for work due to an important personal obstacle, such as a quarantine measure or isolation; during this period, the employee is not entitled to the compensation of wages, unless a special regulation provides otherwise. An employee who is incapacitated for work due to an important personal obstacle due to quarantine measures, isolation, personal and full-time care for a sick family member in accordance with a special regulation or personal and full-time care of a natural person in accordance

with a special regulation, shall be considered for the purposes of Article 64 as an employee who is recognised as being temporarily incapacitated for work. An employee who returns to work after the end of isolation, personal or full-time care for a sick family member in accordance with a special regulation or personal and full-time care for a natural person in accordance with a special regulation shall, for the purposes of Article 157 paragraph 3, be considered an employee who has returned to work after the end of a temporary incapacity for work.

6) If an employee is unable to perform work in full or in part due to the cessation or restriction of the employer's activity on the basis of a decision of the competent authority or as a result of an extraordinary situation, state of emergency or exceptional state, which is considered an obstacle to work on the part of the employer during which the employee is entitled to a wage compensation in the amount of 80 per cent of his/her average earnings, and at the very least the minimum wage; this is without prejudice to the provision of Article 142 paragraph 4.

7) The provision of paragraph 6 shall not apply to employees of economic mobilisation entities on which a work obligation has been imposed. "

(**The eleventh part** of the Labour Code is referred to as **the twelfth part**.)

1.1.3 Social insurance

In Article II of the Act in response to the current COVID-19 crisis, **Act No. 461/2003 Coll. on social insurance** was amended.

It was proposed and adopted:

- to provide for a one-month extension of unemployment allowance for those who, by the time the initial support period during a time of crisis ends, primarily due to the labour market situation, could not find a job.
- in view of the dynamically changing situation and the unpredictable development on the labour market due to the COVID-19 crisis, it was also proposed to authorise the Government of the Slovak Republic to issue government orders, if necessary, to temporarily modify the conditions for entitlement to unemployment benefits, the conditions for payment of unemployment benefits, the duration of the entitlement to unemployment benefits and the amount thereof for the period of the crisis situation related to COVID-19 and for a period of two months thereafter,
- it was proposed that the right to nursing benefit in accordance with Article 293 paragraph 3 letter b) also applies to persons who are insured against sickness, who are caring for a child (own, adopted or entrusted) which, due to the crisis situation, could not enter a pre-school facility after the end of the period of parental leave of the insured person/receipt of parental allowance by the insured. It has been proposed that an insured person, who meets the above conditions of entitlement to the nursing benefit before the Act came into effect during the crisis situation, should also be granted the nursing benefit for this period (**new Articles 293et, 293eu, 293ev**).

1.1.4 Employment services

Article III of the Act in response to the current situation of the COVID-19 crisis, **Act No. 5/2004 Coll. on employment services** was amended.

For the purpose of providing support under Article 54 paragraph 1 letter e) (programme to support employment retention during an extraordinary situation, a state of emergency or an exceptional state and in the period following its cessation), the fulfilment of conditions set out in Article 70 paragraph 7 (e.g. fulfilment of tax obligations, obligation to pay social insurance premiums and mandatory contributions

to old-age pension schemes), the applicant must provide an honest statement. At the same time, during the declared extraordinary situation, state of emergency or exceptional state, the implementation of programmes to support the retention of employment pursuant to Article 54 paragraph 1 letter e) approves an exemption from the obligation to register in the register of public sector partners pursuant to Act No. 315/2016 Coll. on a register of public sector partners due to the accelerated administration of assistance to employers and self-employed persons who have been affected by the impacts of the current pandemic.

(new paragraph 9 in Article 70 and Article 72am)

1.1.5 Safety and health at work

In Article V of the Act in response to the current COVID-19 crisis, **Act No. 124/2006 Coll. on safety and health at work** was amended.

The aim is to support employers and entrepreneurs in times of crisis from fulfilling the obligations arising from this Act, which objectively, even with regard to the measures taken in a crisis situation, cannot be met or would be particularly difficult to meet or disproportionately burdensome. The condition has also been introduced according to which the fulfilment of an obligation or of a necessary measure is not required if their fulfilment is not objectively possible.

After Article 39h, a new Article 39i has been inserted: **transitional provisions for the duration of an extraordinary situation, a state of emergency or an exceptional state declared in relation to COVID-19**

The postponement of the obligation to notify employees pursuant to Article 7 paragraph 3 of the Act has been approved (e.g. upon his/her recruitment, of the employee's transfer to another workplace, assignment or transfer to a different job), the non-expiry/suspension of

- a set term for repeated notification according to Article 7 paragraph 5 of the Act,
- a set term for participation in reconditioning stays according to Article 11 paragraph 12 and 13 of the Act,
- time limits (terms) for performing preventive medical examinations in relation to work according to Article 16 paragraph 6 of the Act, which are necessary to maintain the validity of documents on professional competence,
- time limits (terms) for completing and updating professional training in accordance with Article 16 paragraph 8, Article 23 paragraph 6 and Article 24 paragraph 10 of the Act, and time limits (terms) for the performance of official examinations, technical inspections and professional examinations and inspections of work equipment established pursuant to Article 9 paragraph 1 letter a) and Article 13 paragraph 3 of the Act.

Act No. 66/2020 Coll. supplementing Act No. 311/2001 Coll. Labour Code as amended and supplementing certain Acts entered into force on 4 April 2020.

1.1.6 Civil service

On 2 April 2020, the National Council of the Slovak Republic (Parliament) approved a government proposal of the Act on special emergency financial measures in relation to the spread of the dangerous contagious human disease COVID-1967 – Act No. 67/2020 Coll..

This Act regulates measures in areas that are within the competence of the Ministry of Finance of the Slovak Republic. Its objectives in relation to financial management are, inter alia:

- to provide for the possibility of the members of the financial administration to perform civil services at another address during the pandemic,
- to specify the conditions for the fulfilment of obligations relating to service evaluation and the declaration of assets.

Part Three: Measures in the field of civil services of members of the financial administration

Article 15 Performance of official tasks at the place of permanent or temporary residence of a member of the financial administration or at another agreed place

During a pandemic, a supervisor can authorise a member of the financial administration to perform duties at the place of his/her permanent residence, temporary residence or other agreed place, if the nature of tasks and the conditions for their performance to members of the financial administration allow for it; such performance of tasks shall not be considered business trips.

Article 16 Special regulation on the obligation to conduct an official evaluation and the obligation to file a declaration of assets

The obligation to conduct an evaluation and the obligation to file a declaration of asset during the pandemic period shall be deemed to have been duly fulfilled if the obligation is met no later than 60 days after the end of the pandemic.

Act No. 67/2020 Coll. entered into force on 9 April 2020.

Before this date, however, Parliament approved an amendment of this Act. On 7 April 2020, Parliament approved an Act amending Act No. 67/2020 Coll. on special emergency measures in the financial field in connection with the spread of the dangerous contagious human disease COVID-19 - Act No. 75/2020 Coll.

The new Articles 15a (Service leave (absence) to care for a child of a member of the financial administration) and 15b (Additional service leave (absence) to care for a child of a member of the financial administration) were inserted after Article 15 of the Act.

According to **Article 15a** in case of child care duty for a child under the age of 11 on the grounds that the child care facility the child usually visits or the school s/he attends have been closed in accordance with an order of the competent authorities, the supervisor shall grant the member of the financial administration leave with the right to his/her salary at 100 per cent of the last awarded salary **for a maximum of the first 7 days**, if the need for care persists. In case of child care, such leave shall be granted only once and only to one of the beneficiaries.

According to **Article 15b paragraph 1**, in case of child care duty for a **child under the age of 11**, because the child care facility the child usually visits or the school s/he attends have been closed in accordance with an order of the competent authorities, the supervisor shall grant the member of the financial administration leave in accordance with Article 15a **for the necessary additional time** with the right to a salary in the amount of 75 per cent of the last salary awarded to him/her.

According to **Article 15b paragraph 2**, in case of child care duty for a **child** in compulsory schooling because the child care facility the child usually visit or the school s/he attends have been closed in accordance with an order of the competent authorities, the supervisor shall grant the member of the financial administration, who is permanently caring for at least one such child and is a single parent, in addition to the leave under the special regulation, an additional leave with the right to a salary in the amount of 75 per cent of the last salary awarded to him/her.

Child care leave under paragraphs 1 and 2 shall, in the same case, always be granted to only one of the beneficiaries, and may be granted repeatedly in the same case and for the same reason (Article 15b paragraph 3).

In case of an urgent need to ensure the performance of the civil service or the protection of the life or rights of others, a supervisor may, during a pandemic, interrupt a member of the financial administration's additional leave under paragraph 1 or paragraph 2 (Article 15b paragraph 4).

Both Acts, i.e. [Act No. 67/2020 Coll.](#) and [Act No. 75/2020 Coll.](#), have been in force since 9 April 2020.

1.1.7 Government order to work

On 9 April 2020, the Government of the Slovak Republic approved a decree for the implementation of special economic mobilisation measures - No. 77/2020 Coll..

The government has ordered the implementation of special measures of economic mobilisation and the financing of such measures during the period of a declared state of emergency (Article 1 of the Decree). In addition to many other measures, the work obligation can be imposed in a defined area.

The district office has the power to issue an order for work obligation of natural persons in accordance with the needs of designated entities that implement the ordered economic mobilisation measures. According to Article 8 paragraph 2 of the Decree, a person to whom a written order for the performance of a work obligation is delivered is required to accept its delivery from a person authorised to deliver such a written order, otherwise the district office is entitled to impose a fine pursuant to Article 32 paragraph 2 of the Act (*Act No. 179/2011 Coll. on economic mobilisation and on the amendment of Act No. 387/2002 Coll. on the management of the state in crisis situations outside situations of war and states of war, as amended*).

According to Article 12 paragraph 2 of the Decree, the employee of the designated subject of economic mobilisation is required according to Article 19 paragraph 2 of the Act to remain in an employment relationship or in a similar employment relationship, if his/her employer implements an economic mobilisation measure pursuant to Articles 2 to 10 and his/her job within the organisational structure of the entity is necessary to ensure implementation of the economic mobilisation measure.

Decree of the Government of the SR No. 77/2020 Coll. has been in force since 10 April 2020.

1.1.8 Government order to provide health services

"The Resolution of the Government of the Slovak Republic No. 233 of 16 April 2020 on the proposal to extend the state of emergency pursuant to Article 5 of the Constitutional Act No. 227/2002 Coll. on state security in times of war, state of war, extraordinary state and emergency state, as amended, to impose a duty to provide health care within the scope of nursing care in residential social services facilities, which are facilities for seniors, nursing facilities, homes of social services, specialised facilities, in the facilities of social and legal protection of children and social guardians, which are centres for children and families and the extension of the ban on exercising the right to strike by some workers declared by the Government of the Slovak Republic No. 114 of 15 March 2020." – No. 84/2020 Coll..

By Government Resolution No. 233 of 16 April 2020, the range of employees covered by the imposition of work obligation and the prohibition of strikes on workers was extended.

Point B.1. of the Resolution - Annex to the Resolution of the Government of the Slovak Republic No. 115/2020 is supplemented by points j) and k), which read as follows:

"j) holders of a license to operate a general clinic,

k) holders of a license to operate a specialised clinic.”;

Point C.1. of the Resolution - the government **imposes**, with effect from 18 April 2020 pursuant to Article 5 paragraph 3 letter b) of the Constitutional Act No. 227/2002 Coll. on state security in times of war, state of war, extraordinary state and emergency state, as amended, the **work obligation** of employees of entities that were added to the annex to the Resolution of the Government of the Slovak Republic No. 115 of 18 March 2020, **in point B.1.** of this Resolution;

Point D.1. of the Resolution - the government **prohibits**, with effect from 18 April 2020, the exercise of **the right to strike** by persons on whom a work obligation has been imposed **in point C.1.** of this Resolution.

Resolution published as No. 84/2020 Coll. has been in force since 18 April 2020.

1.1.9 Unemployment benefits

The Government of the Slovak Republic pursuant to Article 293et paragraph 4 of Act No. 461/2003 Coll. on social insurance as amended by Act No. 66/2020 Coll. orders:

Unemployment benefit period, which was extended or began to run again according to Article 293et paragraph 1 of the Act, and **which would elapse during** the period of the extraordinary situation, state of emergency or exceptional state declared in connection with the COVID-19 crisis, **has been extended by one month**; Article 293et paragraph 3 of the Act applies equally (Article 1 paragraph 1 of the Decree).

The **extension** of the unemployment benefit period according to the cited paragraph 1 **shall expire no later than one month from the date of the end** of the extraordinary situation, state of emergency or exceptional state declared in connection with COVID-19 (Article 1 paragraph 2 of the Decree).

(Act No. 461/2003 Coll. on social insurance as amended by Act No. 66/2020 Coll.

Article **293et** Paragraph 1

The unemployment support period according to **Article 105 paragraph 1**, which would have elapsed during the crisis situation, has been extended by one month. The unemployment support period according to Article 105 paragraph 1, which expires during the period of a crisis situation before the entry into force of this Act, shall begin to run again on the date of entry into force of this Act, and shall expire one month from the date of entry into force of this Act.

Article 105 paragraph 1 of the Act

*An insured person who has fulfilled the conditions for entitlement to unemployment benefits shall be entitled to unemployment benefits from the date of inclusion in the register of job seekers and shall expire at the end of the unemployment benefit period. The unemployment benefit period **is six months**. The period during which the insured person is not entitled to the payment of unemployment benefits for the reason specified in Article 106 is not included in the unemployment benefits period./)*

Decree of the Government of the SR No. 101/2020 Coll. has been in force since 30 April 2020.



1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Slovenia

Summary

The so-called second mega package of COVID-19 measures was adopted on 28 April 2020. The measures laid down in the Act on Intervention Measures to Contain the COVID-19 Epidemic and Mitigate the Consequences for Citizens and the Economy covers several different fields of social and economic activities. The report presents selected measures relating to employment and social security contributions by which the measures contained in the first mega package of COVID-19 measures are amended.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 Measures to contain the virus

The information provided in the March Flash Report focussed on the Draft Act on the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (the author's translation of the title of the Act referred to in the March Flash Report differs from the official translation). The information presented in the March report can be supplemented by the following: the Act was enacted by Parliament on 2 April 2020. It was published in the Official Gazette of the RS, No. 49/20, 10 April 2020 - ZIUZEOP. The implementation of the Act revealed that the wording of many provisions were not sufficiently clear and many aspects were deficient. To further clarify the vague provisions and remove any deficiencies and to introduce additional interim measures, ZIUZEOP was amended by ZIUZEOP-A on 28 April 2020 (not yet published in the Official Gazette).

1.1.2 Business subsidies

ZIUZEOP-A, in principle, intends to ensure assistance for businesses to remain liquid (the State guarantee scheme for loans provided to micro, small and medium enterprises) which is a precondition for the continuation of economic activity once the "corona measures" end. In addition, it supplements the text of the ZIUZEOP, further clarifying the regulation/ wording of numerous provisions and/or removes deficiencies on their contents. It deals with the issue of financing for local communities (lump-sum fees) and covers changes relating to judicial and administrative procedures during the epidemic. The amendments also increase the number and/or categories of citizens affected by the COVID-19 epidemic, who are entitled to financial aid from the State, provide new measures relating to the payment of social security contributions (exemption of payment by employers) and complementary measures necessary for the functioning of the public sector.

1.1.3 Social security

Selected measures related to employment and the payment of social security contributions introduced by the amendment of the ZIUZEOP-A are presented here. State assistance has been expanded to cover an additional 190 000 citizens who were excluded from ZIUZEOP.

According to the amended Act, the State financial aid for wage compensations of laid-off workers may be granted to employers for the period after 13 March 2020, whose income in 2020 decreases by 10 per cent or more in comparison with 2019, to

humanitarian and disabled persons' organisations and smaller businesses in the financial and insurance sector (Art. 3 of ZIUZEOP-A amending Art. 22 of ZIUZEOP).

Wage compensations for all workers must amount to at least the minimum wage. (Art. 5 of ZIUZEOP-A amending Art. 26 of ZIUZEOP).

The monthly basic income to which self-employed persons, religious employees and farmers are entitled to under certain conditions, is exempted from taxation and social security contributions (Art. 9 of ZIUZEOP-A, amending Art. 34 of ZIUZEOP).

ZIUZEOP has expanded the group of persons entitled to an additional individual solidarity payment (between EUR 130 and EUR 300) from pensioners to farmers older than 65 years of age and to receivers of occupational pensions that are lower than EUR 700 (Arts. 14 and 15 of ZIUZEOP-A amending Arts. 57 and 58 ZIUZEOP).

Additional individual solidarity payments in the amount of EUR 150 shall be provided to receivers of an additional parental allowance, parents of disabled children, domestic workers, disabled persons, war veterans and disabled persons, farmers, foster parents and irregular (evening) students (Art. 16 of ZIUZEOP-A).

Persons who become unemployed for the period starting on 13 March 2020 until the end of the corona measures and who do not meet the conditions to receive unemployment benefits, are entitled to temporary monthly wage compensation in the amount of EUR 513,64.

1.1.4 Working time in the public sector

For the public sector, ZIUZEOP-A modifies the regulation on overtime work. Overtime work of public servants (relevant especially for those employed in civil defence and rescue operations) may, according to the amended provisions, perform 480 hours of overtime work annually, but are entitled to proportional (longer) breaks. (Art. 20 amending Art. 67 of ZIUZEOP).

A public servant performing urgent work shall be allowed to use the remaining part of his/her annual leave for 2019 until 31 December 2020 (instead of 30 June 2020) (Art. 25 of ZIUZEOP-A).

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Spain

Summary

The government has declared a state of emergency to prevent the spread of COVID-19. On 14 March, the government issued a lockdown for 15 days, which has been extended. The government has approved various measures to deal with the situation, some of which aim to minimise the impact on employment relationships.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

1.1.1 General overview

The government declared a state of emergency ([Article 116](#) of the Spanish Constitution) which has been extended several times, the last one [until 10 May 2020](#). Among other consequences, all recreational, cultural, sports and commercial activities were suspended on 14 March 2020, as well as hospitality and educational activities that are carried out on-site ([Royal Decree 463/2020](#), 14 March 2020). There are plans to gradually lift the lockdown based on different stages, but this process will last at least eight more weeks.

The labour measures adopted during the month of March continue to apply and additional measures have been adopted, but they have a lower impact. Paid leave for the period of the rigid lockdown in place between March 30 and April 9 has ended, and many sectors have resumed their activities. For example, the construction sector has resumed its activities, although [repair works in inhabited buildings are not allowed](#) to avoid contagion through contacts between workers and the inhabitants of that building.

Telework is the preferred mode of work for workers who can continue working remotely. Where this is not possible, the law now provides for multiple options to modify the working conditions and working hours to deal with the COVID-19 crisis. These extraordinary measures will be in force during the state of emergency and for three months following the end of the crisis ([Article 15 of Royal Decree 15/2020](#), 21 April, has extended the initial duration provided for in [Royal Decree 8/2020](#) for two months).

1.1.2 Temporary lay-offs

Since [Royal Decree 15/2020](#), 9 April, temporary lay-offs due to force majeure are also allowed in all private undertakings, even those included in the list of essential services.

These undertakings were excluded from temporary lay-offs by [Royal Decree 8/2020](#).

1.1.3 Recruitment of health personnel

The number of sick people has necessitated an increase in the hiring of health personnel and the standard requirements have been eased for this purpose. As reported in the last Flash Report, [Orden SND/232/2020](#), 15 March, adopted such measures, and [Orden SND/319/2020](#), 1 April, has reinforced this approach.

The hiring of specific personnel, who have not yet obtained the relevant title, is possible, the recruitment of health personnel from countries that are not members of the European Union has been eased (with [specific provisions](#) in some regions, as

Extremadura) and the employment contracts of resident physicians have been extended and their evaluations postponed to deal with the COVID-19 crisis.

1.1.4 Employment in the agricultural sector

The pandemic caused by COVID-19 has had a notable impact on the economy and on employment. The agricultural sector has been greatly affected, because the available labour force has been reduced due to the restriction of movement. As a consequence, the harvesting of many fruits and vegetables—and the food supply—is at risk.

To address this situation, the government has approved measures to ease the recruitment of fixed-term workers in the agricultural sector. On account of these [flexibility measures](#) (extraordinary, according to this provision), the wages for fixed-term workers in agriculture during this period are compatible with unemployment benefits and other social assistance.

This is a measure targeting unemployed people, workers affected by temporary lay-offs due to COVID-19 and foreigners with a work permit that expires before 30 June.

1.1.5 Public employment

Some regions have introduced measures to guarantee the provision of essential services and protect the general interest. These measures affect all staff of that public administration, both officials and workers with an employment contract.

These measures include new assignments of tasks and functions, transfers to another work centre, [modifications](#) in working time, including leaves and breaks, and greater flexibility for the hiring of new personnel (i.e. in the [region of Navarra](#)).

The working time of judicial staff will also be [adapted](#) to facilitate the functioning of courts. The measures for judicial staff extend to the entire country and will last for three months after the end of the state of emergency.

1.1.6 Financial support for people with low incomes and self-employed workers

Some regions have introduced benefits for people with low incomes who have been temporarily laid off (i.e. Valencia).

Other regions provide financial support to help self-employed workers whose businesses have been impacted by the effects of COVID-19 (i.e. Andalucía).

The most recent measures are aimed to [protect employment](#), adapting the programmes to promote employment in this extraordinary situation (i.e. Andalucía).

The impact of the lockdown on people is tremendous. Regional governments are trying to prevent the closure of many small businesses (shops, stores, etc.) and to guarantee minimum incomes for families and people in need.

They include [Andalucía](#), [Castilla-León](#), [Cataluña](#), [Valencia](#).

1.1.7 Transport of goods by road

As reported in the previous Flash Report, the government has temporarily exempt—until April 12—the application of the following rules of Regulation No. 561/2006:



- Article 6.1: The maximum daily driving time can be extended, but the requirements established for breaks and for daily and weekly rests must be respected.
- Article 8.6: The 45-hour weekly rest period can be replaced by a continuous rest of at least 24 hours, without the need for compensation.
- Article 8.8: The weekly rest period can be enjoyed in the vehicle itself, as long as it is parked and adequately equipped for rest.

Once these exemptions have ended, the government aims to replace them with other [exemptions](#).

The following exemptions apply from 13 April to 31 May:

- Article 6.1: The maximum daily driving time is increased from 9 to 11 hours.
- Article 8.1: The daily rest period is reduced from 11 to 9 hours (also for passenger transport services in the agricultural sector).
- Article 8.6: Possibility of taking two consecutive reduced weekly rest periods of at least 24 hours, provided that:
 - a) the driver will take at least 4 weekly rest periods during those 4 consecutive weeks, and at least two will have to be normal weekly rest periods of at least 45 hours.
 - b) Compensation for reduced weekly breaks will not be necessary.
- Article 8.8: The weekly rest period can be enjoyed in the vehicle itself, as long as it is parked and adequately equipped for rest.

The explanatory memorandum of this provision states that the European Commission's authorisation has been requested prior to its adoption.

1.1.8 Vocational training

The state of emergency has led to the suspension of all educational activities carried out on-site and this limitation affects vocational training. However, vocational training is allowed through distance learning (telelearning, e-learning).

Vocational training must be delivered through the 'virtual classroom', i.e. [technology must allow interaction in real time](#). However, [vocational training](#) on-site has been allowed for railway staff.

1.1.9 Unemployment benefits

Article 22 of Royal Decree 15/2020 allows the worker to receive unemployment benefits if his/her contract was terminated after 9 March by a decision of the employer during the probation period. As a general rule, the law requires to take the reason why the employment contract was terminated into account. According to this new provision, this requirement is not applicable to contracts being terminated during the state of emergency.

The right to unemployment benefits has also been extended to workers who resigned from a job because they had a job offer with another undertaking, but the contract never started due to the COVID-19 crisis.

The government continues to [extend unemployment benefits](#) (in an extraordinary way) to deal with the consequences of the lockdown.



1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

Nothing to report.

Sweden

Summary

The Swedish Parliament has passed a number of amendments to labour market legislation in response to the coronavirus crisis. The provisions in the Act on Support for Reduced Working Hours as well as the Unemployment Benefit Act have seen the most significant revisions.

1 National Legislation

1.1 Measures to respond to the COVID-19 crisis

Swedish society and the labour market have not been subject to a compulsory lockdown, but people have been instructed to work from home to the extent possible and to adhere to social distancing. The health authorities as well as the political leadership have emphasised the importance of staying at home, even at the slightest indication of infection. The number of employees on short-term sick leave increased dramatically during March and early April, but has since bounced back somewhat.

Kindergartens, primary and secondary schools have remained open, while high schools and universities switched to online learning in the second half of March. Numerous businesses in industry and service sectors have suffered dramatically from the crises and the government has released an updated estimate of an [unemployment rate of 9 per cent during 2020 and 2021](#).

The [Unemployment Benefit Act](#) (lagen 1997:238 om arbetslöshetsförsäkring) has been temporarily amended to cover more unemployed and provide higher benefits. To be eligible for Swedish unemployment benefits, the individual must have been registered as a member for 12 consecutive months before applying for unemployment and to typically have been employed for six months prior to claiming unemployment in order to be covered by the income-based insurance benefit. Membership is voluntary and costs between EUR 10 and EUR 14/month for the individual employee and those not insured under the scheme. The recent amendments reduce the membership criteria, effective for 3 months, while the maximum benefit has increased from approx. EUR 2 000/month to EUR 2 600 /month.

Short-term layoffs and redundancies

As has previously been reported in Flash Report 3/2020, the Swedish Employment Protection Act stipulates that an employer has the obligation to pay the employees' salaries in full during short-term layoffs (section 21, [lagen 1982:80 om anställningsskydd](#)). In April, Parliament passed an amendment to the Act on Support for Reduced Working Hours, [lagen 2013:948 om stöd vid korttidsarbete](#) which now provides for a *sharing of the financial burden* between the employee, the employer and the State (see table below). The ceiling of the protected salary is approx. EUR 4 400 /month.

While such financial support has (since 2013) been dependent on a "crisis collective agreement" at central level concluded between the industrial partners in the respective sector (a very common feature during crises), companies without collective agreements might also qualify under the Act. In order to qualify, such companies must obtain the approval of at least 70 per cent of employees at the affected workplace and for them to conclude a reduction contract with the employer. The reduction shall apply equally to all affected employees at the workplace ([Para 16](#)).

The support, which is applied for and distributed by the Swedish Agency for Economic and Regional Growth (Tillväxtverket), results in reduced costs for the employer during a short-term reduced working hour arrangement.

Level	New working time (paid by the employer)	Crisis reduction employer "pays"	Employees' "contribution" by reduced salary	Government	Reduced cost for the employer (including social contributions)
Level 3	40 %	7,5 %	7,5 %	45 %	-53 %
Level 2	60 %	4 %	6 %	30 %	-36 %
Level 1	80 %	1 %	4 %	15 %	-19 %

See, Tillvaxtverket.se

The government has already made a [proposal](#) to further expand this support and to provide for reduced working time for 80 per cent of all employees (with only 20 per cent working full time). The proposal, which will likely be approved by Parliament, will relieve the burden on employers even more for workers working reduced hours. The proposed amendments are intended to enter into force for the period 1 May – 31 July 2020.

Level	New working time (paid by the employer)	Crisis reduction employer "pays"	Employees' "contribution" by reduced salary	Government	Reduced cost for the employer (including social contributions)
Proposed Level 4	20 %	8 %	12 %	60 %	-72 %

As many companies, especially in the service sector, are facing a major cash flow crisis, these measures have been very welcomed and might increase the possibility for many employers to survive the crisis. Employment protection legislation stipulates a (paid) notice period of 1-6 months for redundancies ([section 11 Employment Protection Act](#)). The Act on Support for Reduced Working Hours does not cover salaries paid during the notice period for redundancy.

1.2 Other legislative developments

Nothing to report.

2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

(The CJEU'S recent decision in case C-692/19 Yodel, ECLI:EU:C:2020:288 will be examined in the May Flash Report).



4 Other Relevant Information

Nothing to report.

United Kingdom

Summary

- (i) Emergency legislation covers emergency registration of health professionals, social workers and emergency volunteering leave, as well as powers to deliver statutory sick pay, video technology in courts and tribunals and powers to postpone elections.
- (ii) Secondary legislation imposes restrictions on most businesses and individuals' rights of movement.

1 National Legislation

1.1 Measures to combat COVID-19

1.1.1 Key documents

The relevant government web page can be found [here](#).

The self-isolation guidance can be found [here](#).

Specific advice for employees, employers and businesses can be found [here](#).

Guidance on social distancing can be found [here](#).

On 23 March, the government announced a nationwide lockdown and various legislation was adopted:

- Emergency legislation has been passed: Coronavirus [Act](#) 2020 (Royal Assent on 25 Mar 2020). This covers emergency registration of health professionals, social workers and emergency volunteering leave, as well as powers to deliver statutory sick pay (see below), video technology in courts and tribunals and powers to postpone elections.
- Secondary legislation has also been passed imposing restrictions on most businesses and individuals' rights of movement: see e.g. Health Protection (Coronavirus, Restrictions) (England) [Regulations](#) 2020 ([SI 2020/350](#)); an explanatory note is [here](#), which states: 'These Regulations require the closure of businesses selling food or drink for consumption on the premises, and businesses listed in Part 2 of Schedule 2, to protect against the risks to public health arising from coronavirus, except for limited permitted uses. Restrictions are imposed on businesses listed in Part 3 of Schedule 2, which are permitted to remain open. The Regulations also prohibit anyone leaving the place where they live without reasonable excuse, and ban public gatherings of more than two people. The closures and restrictions last until they are terminated by a direction given by the Secretary of State. The need for these restrictions must be reviewed by the Secretary of State every 21 days, with the first review taking place by 15th April 2020.'

1.1.2 New documents

There is now a [plan](#) to introduce the equivalent of furlough for the self-employed (SISS).

The scheme will allow them to claim a taxable grant of 80 per cent of their average monthly trading profits, paid out in a single instalment covering 3 months, and capped at £7,500 altogether. This is a temporary scheme, but it may be extended.

The furlough scheme for employees is now up and running and can be found [here](#) and [here](#).

- The latest Treasury direction is [here](#). The direction takes precedence over the guidance issued by HMRC.
- The British Chambers of Commerce [survey](#) said that over 70% of firms have furloughed staff:
- The furlough [scheme](#) will extend to the end of June.

There has been a [relaxation](#) of drivers' hours due to the emergency situation. The government does, however say:

'The drivers' hours and working time rules are in place to protect road safety and the working conditions of drivers and to reduce the risk of drivers being involved in fatigue-related accidents. As such, any relaxation of these rules should only be considered where genuinely necessary and when other supply chain management interventions are unable to alleviate issues. The Department for Transport wishes to make clear that driver safety must not be compromised. Drivers should not be expected to drive whilst tired - employers remain responsible for the health and safety of their employees and other road users.'

The sick pay regulations have been changed: [SI 2020/374 The Statutory Sick Pay \(Coronavirus\) \(Suspension of Waiting Days and General Amendment\) Regulations 2020](#): a person is incapable of work when they are isolating themselves because:

- They have symptoms of COVID-19, however mild, and are staying at home for seven days, beginning with the day on which the symptoms started (day 1).
- They live with someone who is self-isolating (as above) and are staying at home for 14 days, beginning with day 1
- They are already self-isolating in accordance with the second bullet (above), develop the symptoms of COVID-19, however mild, and are staying at home for seven days, beginning with the day the symptoms started.

ACAS has also published some helpful guidance, which can be found [here](#).

1.1.3 Exit strategy

The government has set five tests before easing any restrictions:

- The government must be confident that the NHS is able to provide sufficient critical care and specialist treatment right across the UK.
- There must be "a sustained and consistent fall in the daily death rates from coronavirus".
- There needs to be reliable data from SAGE showing "that the rate of infection is decreasing to manageable levels across the board".
- The government must be confident that the range of operational challenges, including testing and NHS PPE, will be able to meet future demand.
- The government must be confident that any lifting of restrictions will "not risk a second peak of infections that overwhelm the NHS".

There is considerable pressure in parts of government and the business community about how to manage exit and various scenarios have been leaked. See, for example, [here](#) and [here](#). The Prime Minister is due to give a talk on Sunday 10 May to set out the plans.

1.2 Other legislative developments

Nothing to report.



2 Court Rulings

Nothing to report.

3 Implications of CJEU Rulings and ECHR

Nothing to report.

4 Other Relevant Information

There is concern about the impact of the lockdown on women, migrants and the low paid. More information can be found in the following links:

- <https://www.ukyouth.org/wp-content/uploads/2020/04/UK-Youth-Covid-19-Impact-Report-External-Final-08.04.20.pdf>
- <https://www.theguardian.com/world/2020/apr/28/uks-lowest-paid-most-at-risk-during-covid-19-crisis-report-finds>
- <https://www.theguardian.com/business/2020/apr/20/uk-workers-without-degrees-face-deeper-job-insecurity-amid-coronavirus-pandemic>
- <https://ukandeu.ac.uk/migrant-women-unable-to-access-covid-19-support/>

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